

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-4192

78-6032

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., ORANGE AND ROCKLAND UTILITIES, INC., and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Pliffs-Appellants-Petitioners,

-ac-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Defendant-Appellee-Respondent,

and

DOUGLAS M. COSTLE, as Administrator, U.S. Environmental Protection Agency, ECKARDT C. BECK, Regional Administrator, Region II, U.S. Environmental Protection Agency, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and PETER A.A. BERLE, Commissioner, New York State Department of Environmental Conservation,
Defendants-Appellees,

and

HUDSON RIVER FISHERMEN'S ASSOCIATION,
Intervenor-Defendant-Appellee-Respondent,

JOINT APPENDIX

Albert K. Butzel, Esquire
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Room 2350
New York, New York 10020
Attorney for Intervenor-
Defendant-Appellee

Paul Shemin, Esquire
Office of the Attorney General
Room 4772
Two World Trade Center
New York, New York 10047
Attorney for State Defendants-
Appellees

LeBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005
Attorneys for Plaintiffs-
Appellants-Petitioners

Anne Sidamon-Eristoff, Esquire
Office of the United States Attorney
for the Southern District of New York
One St. Andrews Plaza
New York, New York 10007
Attorney for Federal Defendants-Appellees-
Respondents

PAGINATION AS IN ORIGINAL COPY

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JA 001

NUMBER	FILING DATE MO. DAY YEAR	J	N/S	O	R	R 23	5	DEMAND OTHER	JUDGE NUMBER	CERT.	YR.	NUMBER
77	4370	10	05	77	3	893	1					0357
PLAINTIFFS						DEFENDANTS						

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC.,
ORANGE AND ROCKLAND UTILITIES, INC; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

CARTER, J.
UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY,
COSTLE, DOUGLAS H. as Administrator
U.S. Environmental Protection Agency,
BECK, ECKARDT C., Regional Administrator,
Region II, U.S. Environmental
Protection Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION and
BERLE, PETER A.A., Commissioner,
New York State Department of
Environmental Conservation.

CAUSE

Environmental Protection Agency does not have Jurisdiction to issue contested conditions
of the NPDES permits in certain pending EPA permits proceedings.

ATTORNEYS

LaBoeuf, Lamb, Leiby & MacRae
140 Broadway
New York, New York 10005
269-1100

AUSA A. SIDAMON-ERISTOFF
1 St Andrews Plaza NYC 10007

BUTZEL & KASS ^{EQS}
Proposed Intervenor ^{FOR}
(HUDSON RIVERFISHERMEN'S ASSO)
45 Rockefeller Plaza NYC 10028
765-1800

P. SHERMIN Asst Atty Gen
NYS Atty Gen Off.
2 World Trade Center
NYC 10047

CHECK HERE	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER	C.D. NUMBER	CARD	DATE MAILED
FILED	OCT 5 1977	70114		JS-5	
				JS-6	

DISTRICT COURT DISTRICT

DC-111 (Rev. 1/75)



A

77 Civ. 4870 Central Hudson Gas & Electric Corp. Et. Al. v. National Resources Defense Fund, Inc.

DATE	NR.	Page 2.	PROCEEDINGS	Carter, J.
10-5-77	1.	Filed complaint. Issued summons.		
10-6-77	2	Fld Order appointing process servers.....Clerk.		
10-7-77	3	Fld Order appoint a person to serve process....Clerk.		
11-1-77	4	Affdt of Fld Sums with xxxxxx 's ret. upon U.S. Environmental Protection Agency & D. M. Costle, Adm. ON 10-7-77		by J. Z. L...
		E. C. Beck, Reg Adm, Regil etc	by Mr. J. Rosianski	on 10-6-77
		NY State Environmental Conservation	by Mr. Lipkin	on 10-6-77
		R. B. Fiske U.S. Atty	by P. Troia	on 10-6-77
11-2-77	5	Fld Pltffs' Motion for summ judg....ret 11-11-77 10Am.		
11-2-77	6	Fld Pltff's memo in support of their motion for summ judg.		
11-2-77	7	Fld Pltffs' Rule 9(g) Statement.		
11-9-77	8	Fld Pltffs' affdvt Re: defts' Federal defts' req. for enlargement of time to respond to pltffs' motion for summ judg.		
11-9-77	9.	Filed Stip & Order that the time for defts. N.Y. State Dept. of Environmental Conservation & Peter A.A. Berle to answer the complaint is ext. to 12-5-77..So Order CARTER.J.		
11-10-77	10	Fld Order that federal defts time to answer to pltffs' motion for summ judg is extended to 11-30-77.....Carter, J. mn		
11-11-77	11	Fld Ex Parte Order ext. time to 11-30-77 state defts time to answer pltffs' motion for summ judg.....Carter, J. mn		
11-14-77	12	Fld Govt's affdvt of service of order fld 11-11-77		
11-23-77	13	Fld Hudson River R& Fishermen's Assn's motion for leave to intervene..ret 11-23- 77.....9:30AM Rm 1106.		
11-23-77	14	Fld Hudson River R& Fishermen's memo in support of its motion to intervene		
11-28-77	15	Fld Pltffs' affdvt in further support of pltffs' memo in opposition to Hudson River Fishermen's application for leave to intervene.		
11-28-77	16	Fld Pltffs' memo in opposition to application for Hudson River Fishermen to intervene.		
11-30-77	17	Fld Fed. Defts' Motion for an order dismiss pur to 12(b) or for summ judg....ret. 12-23-77-10AM Rm 2903.		
11-30-77	18	Fld Fed Defts' Memo in support of their motion & dismiss etc.		
11-30-77	19	Fld Fed Defts' Statement pur to 9(g).		
11-30-77	20	Fld Fed Defts' affdvt by M. Scolnick dtd 11-30-77, in support of motion to dismiss.		
12-2-77		Fld memo End on bk of document#13=Motion to intervene is granted..So Ordered..Car-		
12-2-77	21	Fld Interv-Deft Hudson River Fishermen's motion to dismiss/summ judg..ret 12-23-77		
12-23-77	22	Fld " " " " " Memo for to " " " "		

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF	DEFENDANT	DOCKET NO. _____
		PAGE ____ OF ____ PAGES

DATE	NR.	PROCEEDINGS
12-19-77	23	Fld NY State defts' motion for judgment dismissing complt etc..ret 12-23-77 10AM Rm 2903..
12-19-77	24	Fld NY State defts' Affdvt in support of its motion to dismiss.
12-19-77	25	Fld NY State Defts' memo in support of its motion to dismiss.
12-20-77	26	Fld Pltffs' affdvt in opposition to Hudson River's motion to dismiss or for Summ Judg....
12-20-77	27	Fld Pltff memo in opposition to Fed Defts' State Defts' and Interv. Deft's motions to dismiss add cross motions for summ judg.
12-20-87	28	Fld Pltffs' Rule9(g) Stateement.
12-23-77	29	Fld Intervenor-Deft's reply affdvt in response to affdvt of G. S. P. Bergen
1-11-78	30	Fld Pltffs' suppl affvt in Re: amendgnt to Fed. Water Pollution Control Act.
2-10-78	31	Fld Opinion#46869....The defts motion to dismiss for lack of subject matter jurisdiction is granted, and the pltffs' motion for summ judg is denied. It is so Ordered.....Carter, J. mn ()
2-17-78	32	Fld Pltffs' Notice of Appeal to USCA from Opinion fld 2-10-78 Copies mailed on 2-17-78 to: AUSA Sidamon Eristoff.....Asst NYS Atty Shemin and A. K. Butzel.
3-2-78	33	Fld Judgment....Ordered..that defts United States Environmental Protection Agency, et al have judgment against pltffs Central Hudson Gas & Electric Corp, et al dismissings the action for lack of subject matter jurisdiction.Clerk...3-2-78....mn
3-3-78	34	Fld Pltffs' Amended Notice of Appeal to USCA from Judgment etnored 3-2-78 --Copies to AUSA A. Sidamon-Eristoff., Asst Atty Gen of NY P. Shemin., A. K. zel...on 3-6-78.

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By *[Signature]*

[The next page is JA 009]

The next page is JA009

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

LeBOEUF, LAMB, LEIBY & MacRAE

RECORDS DEPT.

CIVIL ACTION FILE NO. 77 Civ.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
 ORANGE AND ROCKLAND UTILITIES, INC.; and
 POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiff

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
 DOUGLAS M. COSTLE, as Administrator, U.S.
 Environmental Protection Agency,
 ECKARDT C. BECK, Regional Administrator, Region II
 U.S. Environmental Protection Agency
 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
 CONSERVATION, and
 PETER A.A. BERLE, Commissioner, New York State
 Department of Environmental Conservation,

Defendants.

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon LeBoeuf, Lamb, Leiby & MacRae

plaintiff's attorney , whose address is 140 Broadway, New York, New York 10005

an answer to the complaint which is herewith served upon you, within 60 days after service of this
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
 taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

NOTE:--This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

SERVED..... BY.....

RECEIVED..... BY.....

☐ HAND

FILED 1/5/77 BY

LIL & MENTRY BY CPS

DOCUMENT No. 1

JA 010

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____ 19____
I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel --- \$ ---
Service ---
=====

United States Marshal.
By -----
Deputy United States Marshal.

Subscribed and sworn to before me, a _____ this
day of _____, 19____
[SEAL] -----

Note:—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. -----
United States District Court
FOR THE -----

v.

SUMMONS IN CIVIL ACTION

Returnable not later than _____ days
after service.

Attorney for Plaintiff

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-44)
(Formerly D. C. Form No. 41a Rev. (8-19))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 77 Civ

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;
 ORANGE AND ROCKLAND UTILITIES, INC; and
 POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiff s

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
 DOUGLAS M. COSTLE, as Administrator, U.S.
 Environmental Protection Agency,
 ECKARDT C. BECK, Regional Administrator,
 Region II, U.S. Environmental Protection
 Agency,
 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
 CONSERVATION, and
 PETER A.A. BERLE Commissioner, New York State
 Department of Environmental Conservation,
 Defendants.

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon LeBoeuf, Lamb, Leiby & MacRae

plaintiff's attorney , whose address is 140 Broadway, New York, New York 10005

an answer to the complaint which is herewith served upon you, within 20 days after service of this
 summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be
 taken against you for the relief demanded in the complaint.

Clerk of Court.

Deputy Clerk.

Date:

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT
 DISTRICT OF NEW YORK

-----X
 CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
 CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;
 ORANGE AND ROCKLAND UTILITIES, INC; and
 POWER AUTHORITY OF THE STATE OF NEW YORK,
 :

Plaintiffs, :

- against - :

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
 DOUGLAS M. COSTLE, as Administrator, U.S.
 Environmental Protection Agency,
 ECKARDT C. BECK, Regional Administrator,
 Region II, U.S. Environmental Protection
 Agency,
 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
 CONSERVATION, and
 PETER A.A. BERLE, Commissioner, New York
 State Department of Environmental Conservation,
 :

AFFIDAVIT OF
 PERSONAL
 SERVICE

-----X
 STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

PAULETTE BLAIR, being duly sworn, deposes and says that:

She is over eighteen years of age, is not a party to
 this action, and is employed by the firm of LeBoeuf, Lamb, Leiby
 & MacRae, 1757 N Street, N.W., Washington, D.C.

On the 7th day of October, 1977, in the afternoon,
 deponent served the foregoing Summons, Complaint and Appendix A
 upon defendants United States Environmental Protection Agency,
 and Douglas M. Costle, Administrator, United States Environmental
 Protection Agency by delivering true copies thereof personally to
 Joan Z. Bernstein, a designee of Douglas M. Costle at the United
 States Environmental Protection Agency, who is a person duly
 authorized to accept said papers. Deponent further states that
 Ms. Bernstein is approximately 5 feet 2 inches tall, weighs
 approximately 105 pounds and has brown eyes.

Paulette Blair

PAULETTE BLAIR

Sworn to before me this
 7th day of October, 1977.

Phyllis Marriott
 NOTARY PUBLIC

MY COMMISSION EXPIRES JULY 14, 1979

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
:

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;

ORANGE AND ROCKLAND UTILITIES, INC; and

POWER AUTHORITY OF THE STATE OF NEW YORK,

:

Plaintiffs,

:

- against -

:

UNITED STATES ENVIRONMENTAL PROTECTION

AGENCY,

DOUGLAS M. COSTLE, as Administrator, U.S.

Environmental Protection Agency,

ECKARDT C. BECK, Regional Administrator,

Region II, U.S. Environmental Protection

Agency,

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL

CONSERVATION, and

PETER A. BERLE, Commissioner, New York

State Department of Environmental Conservation.

:

Defendants.

:

AFFIDAVIT OF
PERSONAL SERVICE

-----x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

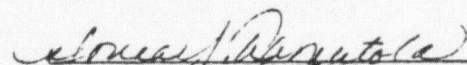
DONNA J. TRAMUTOLA, being duly sworn, deposes and says
that:

She is over eighteen years of age, is not a party to
this action, and is employed by the firm of LeBoeuf, Lamb, Leiby
& MacRae, 140 Broadway, New York, New York.

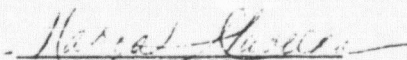
On the 6th day of October, 1977, in the afternoon,
deponent served the foregoing Summons, Complaint and Appendix A
upon defendant Eckardt C. Beck, Regional Administrator, Region II,
U.S. Environmental Protection Agency by delivering true copies
thereof personally to Ms. Jeane Rosianski a person fully authorized
to accept said papers on behalf of Eckardt C. Beck at the U.S.
Environmental Protection Agency. Deponent further states that Ms.
Rosianski is approximately 35 years of age, 5 feet 7 inches tall,
with blond hair, weighing approximately 135 pounds.

Deponent further states that she also served the foregoing Summons, Complaint and Appendix A upon defendant New York State Department of Environmental Conservation by delivering true copies thereof personally to Mr. Lipkin, a person fully authorized to accept said papers on behalf of the New York State Department of Environmental Conservation. Deponent further states that Mr. Lipkin is approximately 40 years of age, 5 feet 8 inches tall, with dark brown hair, weighing approximately 170 pounds.

Deponent further states that she also served the foregoing Summons, Complaint and Appendix A upon Robert B. Fiske, Jr., the United States Attorney for the Southern District of New York by delivering true copies thereof personally to Ms. Pauline P. Troia, Chief, Civil Clerk's Section, U.S. District Court, Southern District of New York a person fully authorized to accept said papers on behalf of Robert B. Fiske, Jr. Deponent further states that Ms. Troia is approximately 55 years old, 5 feet 3 inches tall, with dark brown hair, weighing approximately 125 pounds.


DONNA J. TRAMUTOLA

Sworn to before me this
20th day of October, 1977.


NOTARY PUBLIC

MARIA HAVELKA
Notary Public, State of New York
No. 41-4637876
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;
ORANGE AND ROCKLAND UTILITIES, INC; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

- against -

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U.S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

AFFIDAVIT OF
PERSONAL SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

HARVEY RABINER, being duly sworn, deposes and says that:

He is over eighteen years of age, is not a party to this
action, and is employed by the firm of LeBoeuf, Lamb, Leiby &
MacRae, 140 Broadway, New York, New York.

On the 11th day of October, 1977, in the forenoon,
deponent served the foregoing Summons, Complaint and Appendix A
upon defendant Peter A.A. Berle, Commissioner, New York State
Department of Environmental Conservation by delivering true copies
thereof personally to Carl G. Dworkin, a person fully authorized
to accept said papers on behalf of Peter A.A. Berle. Deponent
further states that Mr. Dworkin is approximately 32 years of age,
5 feet 7 inches tall, 170 pounds with brown hair.

Harvey Rabiner
HARVEY RABINER

Sworn to before me this
21st day of October, 1977.

Maria Havelka
NOTARY PUBLIC

MARIA HAVELKA
Notary Public, State of New York
No. 41-4837878
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;	:	
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;	:	
ORANGE AND ROCKLAND UTILITIES, INC; and	:	
POWER AUTHORITY OF THE STATE OF NEW YORK,	:	
	:	COMPLAINT FOR
Plaintiffs,	:	DECLARATORY
	:	JUDGMENT AND
-against-	:	INJUNCTIVE
	:	RELIEF
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,	:	
DOUGLAS M. COSTLE, as Administrator, U.S.	:	
Environmental Protection Agency,	:	
ECKARDT C. BECK, Regional Administrator,	:	
Region II, U.S. Environmental Protection	:	Index No.
Agency,	:	77 Civ. _____
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL	:	
CONSERVATION, and	:	
PETER A.A. BERLE, Commissioner, New York	:	
State Department of Environmental	:	
Conservation,	:	
	:	
Defendants.	:	
	:	
-----X	:	

Plaintiffs, by their attorneys LeBoeuf, Lamb, Leiby & MacRae, for their complaint, respectfully allege as follows:

JURISDICTION AND VENUE

1. Jurisdiction of this Court is based upon 28 U.S.C. §§1331, 1337, 1361, 2201 and 2202, and is brought against an agency of the United States and officers and employees thereof in their official capacities for a declaratory judgment and to enjoin and prohibit said agency and officers and employees from continuing to act outside of the jurisdiction of said agency.

2. Each Plaintiff maintains an office, transacts business and may be found within this district and the acts complained of, as hereinafter alleged, were performed in this district. Defendants include officers and employees

of an agency of the United States acting in their official capacity. Real property owned by plaintiffs and involved in this action is situated in this district. The cause of action arose in this district by virtue of acts, as hereinafter alleged, of defendant EPA and its officers and employees in this district. Venue lies in this district pursuant to 28 U.S.C. §1391.

THE PARTIES

3. Plaintiff Central Hudson Gas & Electric Corporation ("Central Hudson") is a New York corporation engaged in, among other things, generation and distribution of electricity in parts of Putnam, Dutchess and other counties in New York State pursuant to regulation by the New York State Public Service Commission ("PSC"), and maintains its principal offices at 284 South Avenue, Poughkeepsie, New York 12602.

4. Plaintiff Consolidated Edison Company of New York, Inc. ("Con Edison") is a New York corporation engaged in, among other things, the generation and distribution of electricity in New York City and parts of Westchester County, pursuant to regulation by the PSC, and maintains its principal offices at 4 Irving Place, New York, New York 10003.

5. Plaintiff Orange and Rockland Utilities, Inc. ("Orange and Rockland") is a New York corporation engaged in, among other things, the generation and distribution of electricity in Orange and Rockland Counties and elsewhere pursuant to regulation by the PSC and maintains its principal offices at One Blue Hill Plaza, Pearl River, New York 10965.

6. Plaintiff Power Authority of the State of New York ("Power Authority") is a corporate municipal instrumentality and political subdivision of the State of New York, organized pursuant to the Laws of the State of New York, [See, N.Y. Public Authorities Law, §1000 et seq. (McKinney's 1970)], is engaged in the generation and wholesale sale of electricity, and maintains its principal offices at 10 Columbus Circle, New York, New York 10019.

7. Defendant United States Environmental Protection Agency ("EPA") is an agency of the United States organized pursuant to Reorganization Plan 3 of 1970, 3 C.F.R. 1072 (1966-1970 Compilation), reprinted in 5 U.S.C., app., at 609(1970).

8. Defendant Douglas M. Costle is the Administrator of EPA and maintains his office at Fourth and M Streets, S.W., Washington, D.C. 20460.

9. Defendant Eckardt C. Beck is the Regional Administrator of Region II of EPA, and maintains his office at 26 Federal Plaza, New York, New York 10007.

10. Defendant New York State Department of Environmental Conservation ("NYDEC") is an agency of the State of New York, maintains its principal offices at 50 Wolf Road, Albany, New York 12233, and maintains an office at 2 World Trade Center, New York, New York 10097.

11. Defendant Peter A.A. Berle is the Commissioner of NYDEC, and maintains his office at 50 Wolf Road, Albany, New York 12233.

THE POWER PLANTS

12. Plaintiff Central Hudson operates Roseton Generating Station, a power plant which consists of two oil-fired steam-electric generating units of 600 megawatts (mw) capacity each, located on the west bank of the Hudson River near Roseton, in Orange County, New York. Roseton Generating Station is owned by Niagara Mohawk Power Corporation and plaintiffs Central Hudson and Con Edison as tenants-in-common.

13. Plaintiff Orange and Rockland operates Bowline Point Generating Station, which consists of two 600 mw oil-fired steam-electric generating units located on the west bank of the Hudson River near Haverstraw, in Rockland County, New York. Bowline Point Generating Station is owned by plaintiffs Orange and Rockland and Con Edison as tenants-in-common.

14. Plaintiff Con Edison owns and operates Indian Point Unit 2, an 873 mw nuclear steam-electric generating unit located on the east bank of the Hudson River near Buchanan, in Westchester County, New York.

15. Plaintiff Power Authority owns Indian Point Unit 3. Plaintiff Power Authority acquired title to Indian Point Unit 3 from Con Edison on December 31, 1975. Indian Point Unit 3 is a 965 mw nuclear steam-electric generating unit located on the same site as, and adjacent to, Indian Point Unit 2. Indian Point Unit 3 is operated by plaintiff Con Edison.

16. Each unit of the above power plants generates electricity by causing the armature of a generator to rotate in a magnetic field. The rotational force is produced by a

steam-driven turbine, which converts heat energy from steam into rotational mechanical energy. The steam is produced by burning fuel such as oil, or from a nuclear reaction. Thermodynamic laws require that a portion of the heat energy thus produced be removed from the electric generating unit by a cooling system. Each of these electric generating units currently employs what is known as a once-through cooling system: Pumps housed in an intake structure located on the river bank withdraw water from the Hudson River, circulate the water through condensers in the power plant where heat is transferred to the cooling water, and then return the cooling water to the river at a slightly increased temperature.

THE FEDERAL WATER POLLUTION CONTROL ACT

17. The Federal Water Pollution Control Act as amended October 18, 1972 (the "Act"), 33 U.S.C. §§1251-1376 (Supp. V 1975) (P.L. 92-500), in Section 301(a) (for convenience, references to sections of the Act are to the Public Law section numbers), provides that the discharge of any pollutant by any person shall be unlawful except as provided in Section 301, Section 402 and certain other sections of the Act and imposes civil and criminal sanctions for noncompliance.

Federally Issued National Pollutant
Discharge Elimination System (NPDES)
Permits

18. Section 402(a) of the Act provides that the Administrator of EPA "may, after opportunity for public hearing, issue a permit ["NPDES permit"] for the discharge of any pollutant...."

19. Section 502 of the Act defines the term "pollutant" to include the discharge of heat, and the term "discharge of a pollutant" to mean any addition of any pollutant to navigable waters from any "point source", a term defined to include any pipe, tunnel, or conduit from which pollutants are discharged.

20. Section 301(b)(2)(A) of the Act provides that by July 1, 1983, discharges must be restricted to achieve limitations requiring application of the "best available technology economically achievable."

21. Section 316(b) of the Act provides that any standard established pursuant to Section 301 shall require that the location, design, construction and capacity of intake structures reflect the best available technology to minimize adverse environmental impact.

22. Section 101(d) of the Act provides that the Administrator of EPA shall administer the Act, except as otherwise expressly provided in the Act.

State Issued State Pollutant
Discharge Elimination System
(SPDES) Permits

23. Section 402 of the Act provides for administration of NPDES permit programs by states and for state-issuance of permits in lieu of issuance of permits by the Administrator of EPA.

24. Section 402(b) of the Act provides that a State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to

the Administrator of EPA a plan for administering such permit program under state law; the Act also provides that upon a showing that the State's plan meets specified requirements, the Administrator of EPA "shall approve" each such submitted program.

25. Section 402(c) of the Act provides that not later than 90 days after a State has submitted a program meeting the requirements of §402(b) of the Act, the Administrator "shall suspend the issuance of permits under subsection (a)" of §402.

EPA FAILURE TO SUSPEND THE ISSUANCE OF THE NPDES
PERMITS FOR PLAINTIFFS' FACILITIES

26. Since the effective date of the Act there have been pending before defendant EPA applications for permits pursuant to §402 of the Act for discharges from Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station; and since July 9, 1974, there has been pending before defendant EPA a similar application for Indian Point Unit 3.

27. Each of these applications seeks determination of the terms and conditions upon which operation of plaintiffs' power plants will be permitted, in accordance with the requirement of Section 301(b)(2) of the Act that "best available technology economically achievable" be achieved by July 1, 1983, and other provisions of the Act. To date, no final determination has been reached with respect to plaintiffs' power plants.

28. In the cases of Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station, the

EPA Region II Administrator, Gerald Hansler (predecessor of defendant Eckardt C. Beck), caused to be mailed to each respective plaintiff operating such unit a "Notice of Issuance of Final Determination" dated February 28, 1975. With respect to the pending permit application in the case of Indian Point Unit 3, said EPA Region II Administrator Hansler caused to be mailed to Con Edison (the Power Authority's predecessor in title), a "Notice of Issuance of Final Determination" under date of June 27, 1975.

29. The "Notices" referred to in Paragraph 28, in the case of each of the aforementioned generating units, provided in relevant part:

"Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final national pollutant discharge elimination system (NPDES) permit...to discharge pollutants into the waters of the United States.

* * *

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975 [on July 31, 1975 in the case of Indian Point Unit 3] unless an Adjudicatory Hearing is granted pursuant to 40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974)... (Emphasis added).

Enclosed with each Notice was a "Final Determination" in the form of a document entitled "National Pollutant Discharge Elimination System Permit, Discharge Permit" (hereinafter referred to for convenience as an "NPDES permit").

30. In the case of Central Hudson's Roseton units, and Orange and Rockland's Bowline units, the NPDES permits provide that no later than July 1, 1981, plaintiffs Central

Hudson and Orange and Rockland shall reduce the discharge of heat from Roseton and Bowline by more than 90%.

31. In the cases of Indian Point Units 2 and 3, the NPDES permits would likewise require reduction of heat discharged from those units by more than 90%, to be accomplished under the Indian Point Unit 2 permit by no later than May 1, 1979, and under the Indian Point Unit 3 permit by no later than September 15, 1980.

32. Compliance with the requirements described in Paragraphs 30 and 31 in each case would mean, as a practical matter, that plaintiffs would be required to install, at tremendous cost, a cooling tower (a type of "closed cycle cooling system") at each of the electric generating units at the power plants herein, and to abandon the once-through cooling systems now in use at those power plants.

33. Upon receipt of the Notices of Issuance of Final Determination and proposed NPDES permits described in Paragraph 29, each plaintiff timely requested an adjudicatory hearing with respect to each generating unit it was then operating, and demanded that EPA advise plaintiffs in detail of the reasons why EPA proposed to require costly cooling towers. No official explanation has ever been supplied by EPA.

34. In the case of Central Hudson's Roseton Generating Station, EPA Region II Administrator Hansler thereafter granted an adjudicatory hearing to Central Hudson by letter dated May 1, 1975. In the case of plaintiff Orange and Rockland's Bowline Point Generating Station, EPA

Region II Administrator Hansler granted Orange and Rockland an adjudicatory hearing by letter dated June 6, 1975. In the case of plaintiff Con Edison's Indian Point Unit 2, EPA Region II Administrator Hansler granted Con Edison an adjudicatory hearing by letter dated May 8, 1975. In the case of plaintiff Power Authority's Indian Point Unit 3, EPA Region II Administrator Hansler granted Con Edison (the Power Authority's predecessor in title) an adjudicatory hearing by letter dated August 28, 1975. In each case, public notice of the granting of adjudicatory hearing was issued by defendant EPA.

35. Each public notice granting an adjudicatory hearing in each of the above cases allowed a hearing on (among other things) the contested conditions in each proposed permit which would have the effect of requiring installation of cooling towers at the respective generating units. The granting of the adjudicatory hearings on these permit conditions had the effect of staying and not issuing the contested conditions of the permits.

36. During the time period commencing on or about April 16, 1974 and extending to October 28, 1975, and while plaintiff's permit applications were being reviewed by EPA Region II, as described above, defendant NYDEC submitted to EPA under Section 402(b) of the Act a permit program established under State law to be administered by NYDEC for navigable waters in New York State. Effective October 29, 1975, EPA determined that NYDEC's authority to administer New York State's permit program for discharges into all navigable waters

within New York State was adequate to carry out the requirements of the Act, and EPA approved the permit program submitted by New York State. 40 Fed. Reg. 54462 (Nov. 24, 1975).

37. However, even though EPA had transferred the permit program to NYDEC on October 29, 1975, on August 4, 1976, EPA Region II requested assignment of an Administrative Law Judge for the adjudicatory hearings described above. Thereafter, an Administrative Law Judge ("EPA ALJ") was assigned to preside at the adjudicatory hearings, and the individual adjudicatory hearings were consolidated, for hearing purposes, by the EPA ALJ's order of February 25, 1977.

38. On February 22, 1977, at the initial pre-hearing conference held by the EPA ALJ, counsel for plaintiffs objected to continuance of the proceeding before EPA on the ground that jurisdiction over issuance of NPDES permits to plaintiffs had been transferred on October 29, 1975 to New York State by operation of law as described in Paragraphs 23-25, and that further proceedings by defendant EPA would only further delay the date upon which plaintiffs would be afforded the opportunity to be heard provided in §402 of the Act with respect to the proposed permit conditions effectively requiring cooling towers.

39. Thereafter, at plaintiffs' request, pursuant to EPA Rules, 40 C.F.R. §125.36(m)(1976), the EPA ALJ referred to the EPA General Counsel the legal question whether jurisdiction to issue these permits lies with NYDEC, and certain other legal questions raised by plaintiffs.

40. The General Counsel of EPA responded to the referred legal issue on jurisdiction, and the other referred

issues, in Decision of the General Counsel on Matters of Law Pursuant to 40 C.F.R. §125.36(m), No. 63, dated July 29, 1977 and served on plaintiffs on August 11, 1977 ("OGC 63"), a copy of which is annexed hereto as Exhibit A.

41. In OGC 63, the EPA General Counsel ruled that EPA's jurisdiction to issue the permit conditions contested by plaintiffs' in their requests for adjudicatory hearings was not transferred to NYDEC even though NPDES permit issuing authority was transferred to NYDEC on October 29, 1975, pursuant to Section 402(b) of the Act. OGC 63 (Exhibit A) at 1-3.

42. The EPA ALJ established a schedule for the administrative hearings now pending before EPA Region II, which called for the filing of plaintiffs' direct testimony on July 11, 1977, and for cross-examination of that testimony commencing on September 7, 1977; for EPA Region II staff to file its responsive testimony on November 1, 1977 (followed by cross-examination on the EPA staff testimony commencing on December 6, 1977); and for plaintiffs to file any rebuttal testimony on January 31, 1978 (followed by cross-examination thereon commencing on February 28, 1978).

43. Plaintiffs, while reserving their objection to EPA's retention of jurisdiction, filed their direct testimony in the EPA administrative hearings on July 11, 1977, in accord with the procedural schedule established by the EPA ALJ.

44. Hearings did not proceed on September 7, 1977. EPA Region II Staff, on August 17, 1977, moved the EPA ALJ to delay the time previously fixed for commencement of cross-examination of the plaintiff's direct testimony by some

160 days, with the major cross-examination of plaintiffs direct testimony to begin not earlier than February 13, 1978, a delay of seven months; and also to delay the other procedural dates previously fixed by the EPA ALJ by 160 days. The EPA ALJ ruled that hearings will be postponed until December 6, 1977, when cross-examination on a limited portion of the direct testimony filed by plaintiffs will commence. Hearings will then adjourn until 1978.

45. EPA Region II has failed to provide plaintiffs with an adequate explanation of the reasons why EPA Region II believes that the enormous cost (over \$358 million in capital cost alone) of installing cooling towers at plaintiffs' powerplants is justified, even though plaintiffs' have repeatedly requested such an explanation, and even though the EPA General Counsel agrees (OGC 63, at 28-31) that such an explanation is necessary to provide adequate notice and due process to plaintiffs. EPA Region II's failure to provide plaintiffs with a clear explanation of the bases for the permits proposed by Region II has delayed and hindered plaintiffs' preparation for the adjudicatory hearings now pending before EPA Region II.

46. Under the present procedural schedule for EPA hearings, cross examination will not commence until December 1977. No evidence has yet been officially received into the hearing record. Transfer of hearings from EPA to NYDEC will not interfere with orderly development of a hearing record or cause duplication of proceedings before NYDEC.

PLAINTIFFS' CAUSE OF ACTION

47. EPA does not have jurisdiction under the Act to issue the contested conditions of the permits in the pending EPA permit proceedings. Jurisdiction lies in NYDEC, by reason of the EPA approval of the New York State permit program effective October 29, 1975, and by reason of §402(c) of the Act, which requires the EPA Administrator to suspend issuance of permits within 90 days following submission of a State permit program which meets the requirements of the Act.

48. Since defendant EPA lacks jurisdiction, further proceedings in the pending administrative hearings before defendant EPA are void and a nullity.

49. By continuing to act with respect to the issuance of NPDES permits to plaintiffs, even though it lacks jurisdiction to do so, EPA is causing substantial injury to plaintiffs. Plaintiffs are obligated under the Act to install whatever facilities might ultimately be determined to be required to carry out the purposes of the Act by no later than July 1, 1983. EPA contends that costly, energy-consuming, cooling towers should be installed. However, permit conditions embodying these contested provisions may not issue until plaintiffs are granted an opportunity to be heard, before the agency having jurisdiction, on their contentions that cooling towers are not required by the Act.

50. Substantial time, on the order of 48 to 60 months would be required to construct and install any cooling tower which plaintiffs might ultimately be required to build.

51. If plaintiffs were ultimately required to install a cooling tower or towers, initial work would have to begin well before July 1, 1983. It is critical that hearings commence as soon as possible before NYDEC, the administrative agency authorized by law to determine whether cooling towers are required by the Act at plaintiffs' power plants.

52. Unless the question of EPA jurisdiction is resolved now, the jurisdictional issue will remain as a latent defect in all further proceedings before EPA. Future litigation of the jurisdictional question, and duplicative agency proceedings, are inevitable in the event the EPA proceedings continue without immediate determination of the jurisdiction question. Following final EPA decision, any party to the adjudicatory hearings will have the opportunity to appeal and to obtain judgment that EPA proceeded without jurisdiction and that EPA's decision was nugatory. Duplicative agency proceedings will delay a final decision upon which plaintiffs can rely.

53. EPA's continued unlawful retention of jurisdiction will delay commencement of proceedings before NYDEC, to the detriment and substantial injury of plaintiffs, because there will not be sufficient time to complete the proceedings before NYDEC, and to construct any facilities as NYDEC may ultimately determine are required to carry out the purposes of the Act, between the time NYDEC's determinations become final and the July 1, 1983 date established in the Act, unless the proceedings are transferred now to NYDEC.

54. Plaintiffs are now faced with the following alternatives, each of which would cause them substantial irreparable harm: a) Committing enormous amounts of money, at the consumers' expense, to comply with EPA's unissued permit conditions even though plaintiffs have not had an opportunity to be heard by the agency having jurisdiction; or b) risking heavy enforcement penalties after July 1, 1983 as a result of the lack of sufficient time before that date for plaintiffs to construct such facilities, if any, as ultimately may be required following hearing before the agency having jurisdiction; or c) closing down one or more of their power plants, which would adversely affect the reliability of electric supply in New York, to the detriment of the public which relies on electric energy as a basic necessity.

55. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray:

A. That this Court declare and adjudge that jurisdiction to issue the contested conditions of the NPDES permits in these cases lies in NYDEC, and not in EPA;

B. That this Court direct and order defendants EPA, Costle and Beck, and each of them, and their successors, agents, servants, employees and attorneys to cease proceeding further with the issuance of NPDES permits to plaintiffs;

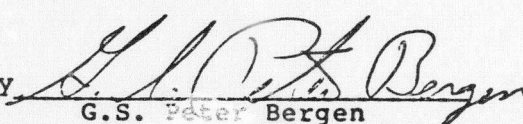
C. That this Court direct and order said defendants to transfer the pending EPA proceedings to defendant NYDEC; and

D. That plaintiffs be awarded such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
October 5, 1977

LeBOEUF, LAMB, LEIBY & MacRAE

By


G.S. Peter Bergen
(A Member)

Attorneys for Plaintiffs
140 Broadway
New York, New York 10022
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Index No. 77 Civ.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORPORATION; CONSOLIDATED
EDISON COMPANY OF NEW YORK,
INC.; ORANGE AND ROCKLAND
UTILITIES, INC.; and POWER
AUTHORITY OF THE STATE OF
NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, ECKARDT C. BECK,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
and PETER A.A. BERLE,

Defendants.

COMPLAINT FOR DECLARATORY
JUDGMENT AND
INJUNCTIVE RELIEF

LEBOEUF, LAMB, LEIBY & MACRAE

140 BROADWAY

NEW YORK, N. Y. 10005

212-269-1100

ATTORNEYS FOR

Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CENTRAL HUDSON GAS & ELECTRIC CORPORATION; :
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; :
ORANGE AND ROCKLAND UTILITIES, INC.; and :
POWER AUTHORITY OF THE STATE OF NEW YORK, :

Plaintiffs, :

-against- :

APPENDIX A
TO COMPLAINT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, :
DOUGLAS M. COSTLE, as Administrator, U.S. :

Environmental Protection Agency, :

ECKARDT C. BECK, Regional Administrator, : Index No.
Region II, U.S. Environmental Protection : 77 Civ. 4870
Agency, : (RLC)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and :

PETER A.A. BERLE, Commissioner, New York :
State Department of Environmental :
Conservation, :

Defendants. :

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C.

DECISION OF THE GENERAL COUNSEL ON MATTERS
OF LAW PURSUANT TO 40 C.F.R. §125.36(m)

No. 63

In the matter of National Pollutant Discharge Elimination System Permits for Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Power Authority of the State of New York, NPDES Permits No. NY 000 8231, NY 000 4472, NY 000 8010, and NY 002 0765, respectively, the Presiding Officer has certified eight issues of law to the Office of General Counsel for decision pursuant to 40 C.F.R. §125.36(m) (39 F.R. 27078, July 24, 1974). The parties, having had an opportunity to provide written briefs in support of their respective positions, present the following issues:

ISSUE OF LAW NO. I

Question Presented

Whether jurisdiction to issue the contested permit conditions in these cases has been transferred by the Environmental Protection Agency (EPA, Agency) to the New York

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Department of Environmental Conservation (NYDEC) by virtue of the transfer of permit issuing authority to NYDEC in October, 1975, pursuant to Section 402(b) of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA, Act)? 1/

1/ Issue of Law No. I was certified to me as requiring resolution of the following four subsidiary questions:

- 1.a. Whether the "public hearing" required under Section 402(a) is an adjudicatory hearing under EPA's rules and the Administrative Procedure Act?
- 1.b. Whether the contested permit-conditions herein have been "issued" within the meaning of Section 402(a) of the FWPCA?
- 1.c. Whether EPA and NYDEC, by their memorandum of agreement dated April 28, 1975 intended that EPA should retain authority to "issue" the contested permit conditions herein?
- 1.d. Whether EPA and NYDEC, by written agreement, may allow EPA to retain jurisdiction to "issue" the contested permit conditions herein, where Section 402(c) states that EPA "shall suspend the issuance of permits" under Section 402(a) after transfer to the States?

Because I have concluded that resolution of most of these subsidiary questions is irrelevant to disposition of the main issue certified by the Presiding Officer, my discussion of Issue of Law No. I will be confined to that main issue only.

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Conclusion

No.

Discussion

These proceedings involve applications for National Pollutant Discharge Elimination System (NPDES) permits for four steam electric generating stations (Utilities) discharging into the Hudson River in New York. On October 28, 1975, several months after Region II had granted the Utilities' requests for adjudicatory hearings on certain terms and conditions contained in the proposed permits issued by the Regional Administrator pursuant to 40 C.F.R. §125.35, but before those hearings were held and prior to any final agency action on the disputed permit conditions, EPA approved the NPDES permit program of the State of New York under Section 402(b) of the FWPCA. The Utilities contend that by virtue of its approval of the New York State program, EPA no longer has jurisdiction to issue the contested permit conditions.

The Utilities' contention raises a question as to the proper interpretation of Section 402(c)(1) of the FWPCA, which provides in pertinent part that:

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Not later than ninety days after the date on which a State has submitted a [permit issuing] program pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304(h)(2) of this Act. [Emphasis added].

The Utilities urge that the underscored language requires the Administrator, within ninety days after submission of a State program, 2/ to divest himself of all permit proceedings which have not become final for purposes of judicial review. I do not agree.

Neither Section 402(c)(1) nor its legislative history 3/ specifies what operative event constitutes

2/ Although no party has identified the date on which NYDEC submitted its proposed program to EPA, it is clear that final action on the contested permit conditions in these proceedings will necessarily be taken after expiration of this 90-day period.

3/ The House Report, for example, states simply that:

Subsection (c)(1) provides that not later than 90 days after the date on

(footnote continued on next page)

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"issuance of permits." Nor is the term defined for purposes of Section 402(c)(1) in EPA regulations. 4/

(footnote continued from previous page)

which a State has submitted a program pursuant to subsection (b), the Administrator shall suspend the Federal permit program authorized under subsection (a) unless he finds the proposed State program does not satisfy the requirements issued under 304(h)(2). [A Legislative History of the Federal Water Pollution Control Act Amendments of 1972 (Leg. Hist.) at 814].

Similarly, the Senate Report provides only that:

after a State submits a program which meets the criteria established by the Administrator pursuant to regulations, the Administrator shall suspend his activity in such State under the Federal permit program. [Leg. Hist. at 1489].

See also remarks of Representative Roe, Leg. Hist. at 428 ("Not later than 90 days after receiving the submittal the State would take over the program unless the Administrator found it did not satisfy the requirement.") and Leg. Hist. at 579 ("After the guidelines are issued, if the State submits an acceptable program, the Administrator would approve it and the State would take over administration of the permit program in that State.").

4/ Although the Utilities have briefed at length the meaning of the word "issue" (and grammatical variations thereof) as used in other subsections of Section 402 and in EPA regulations (e.g., 40 C.F.R. §§125.35(c), (d)(1), and (d)(2)), these provisions in no way purport to determine that stage in a permit proceeding when the Administrator is required to divest himself of permitting authority under Section 402(c)(1). Accordingly, I find their citation inapplicable here.

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While the Utilities would construe "issuance of permits" to mean final (reviewable) agency action, in other subsections of Section 402 Congress has used language defining "final" agency action with unmistakable clarity. See Section 402(k). This suggests that the omission of comparable language in Section 402(c)(1) is both intentional and significant. Cf. Law Motor Freight, Inc. v. CAB, 364 F.2d 139, 144 (1st Cir. 1966), cert. denied, 387 U.S. 905 (1967); International Harvester Co. v. Ruckleshaus, 478 F.2d 615, 629-630 (D.C. Cir. 1973); Duquesne Light Co. v. EPA, 491 F.2d 1, 6, n.27 (3rd Cir. 1973), vacated as moot, _____ U. S. _____, 96 S.Ct. 2196, 48 L.Ed.2d 812 (1976).

For this reason, and, more importantly, because of Congress's expressed desire for an orderly transfer of permit issuing authority from the Corps of Engineers under the Refuse Act of 1899 to the Administrator and ultimately the States under the FWPCA, and for a permit program which would avoid duplication, be expeditious, and permit orderly enforcement and judicial review, 5/ I conclude that the

5/ It is clear from the legislative history of the FWPCA that the regulatory framework of Section 402 was designed to minimize disruption in the issuance of

(footnote continued on next page)

term "issuance of permits" in Section 402(c)(1) should be defined with reference not to the date on which a permit becomes final for purposes of judicial review, but to the date on which the Regional Administrator issues his determination pursuant to 40 C.F.R. §125.35. Thus, EPA retains jurisdiction over a permit issued in that manner until it expires. This includes jurisdiction to modify the permit after an adjudicatory hearing, or for "cause" under §402(b)(1)(C) of the Act.

(footnote continued from previous page)

discharge permits caused by the transfer of issuing authority from the Corps to the Administrator and the States and to "[preserve] the momentum of the Federal permit program already underway." Leg. Hist. at 854. Thus, for example, Congress provided in Section 402(a)(4) that applications for permits under the Refuse Act pending on the date of enactment of the FWPCA would be deemed applications for NPDES permits. Similarly, Section 402(a)(5) authorizes the Administrator to permit States capable of administering their own permit programs to assume permit issuing authority right from the start, without a transitional Federal program.

While minimizing disruption, Congress also sought to avoid duplicative activity by the States, the Federal Government and prospective permittees in the processing of permit applications. Thus, the House Public Works Committee observed that "[a] system of permits which requires duplicative effort . . . is wasteful and nonproductive." Leg. Hist. at 812. See also Leg. Hist. at 389, 428, 580-582, 1184, 1490.

Moreover, Congress clearly intended that permits would be issued promptly and expeditiously. See, e.g., Leg. Hist. at 176 (statement of Senator Muskie that purpose of Section 402(d)(3) is to ensure "that the permit can be expedited"); Leg. Hist. at 1490; Section 402(a)(1) (providing that permits might be issued immediately after enactment, even though "necessary implementing actions" had not been taken).

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To permit the Administrator to retain jurisdiction under Section 402(c)(1) only of those permit proceedings on which final agency action has been taken would thwart Congress's goals in most cases. In the instant proceedings, for example, since not all permit conditions have been contested, the transfer of authority to NYDEC following the issuance of the Regional Administrator's determination, would result in a split permit -- issued in part by EPA, 6/ in part by New York. Federally-issued provisions would be reviewable in a United States Court of Appeals pursuant to Section 509(b) of the FWPCA while State-issued provisions in the same permit could only be reviewed in a State court. Such scenarios are clearly contrary to Congress's expressed desire for orderly and expeditious issuance and review of NPDES permits. 7/

Suspending the Federal permit issuing process prior to a final determination is also likely to delay final

6/ Under EPA regulations, when an adjudicatory hearing is granted, uncontested permit conditions which are severable from contested conditions are considered "issued and effective". 40 C.F.R. §125.35(d)(2).

7/ As stated in its report, the House Committee intended that the FWPCA "establish a clear and orderly process for judicial review." Leg. Hist. at 323.

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action on the permit and result in wasteful use of Federal and State resources, as well as the permit applicant's time and money. Transfer of NPDES proceedings from EPA to a State permitting authority following the issuance of public notice of a Regional Administrator's final determination could result in duplicative preparation for hearing, or, worse yet, duplicate or bifurcated hearings. In the instant proceedings, for example, the effect of transfer at this time would be to shift to State officials the responsibility for conducting a hearing for which Region II has been preparing for many months. In other instances, the transfer could take place during a hearing, or after hearing, but before a final decision. In each case, necessary changes in personnel, together with the possibility that completed proceedings would have to be scrapped and started anew, would result in unwarranted consumption of limited State and Federal resources and lengthy delays in issuance of a final decision.

Additional problems in reaching a final decision and obtaining meaningful judicial review of permit conditions could result from the fact that under EPA regulations, States are not bound to follow the same procedures as EPA in conducting NPDES hearings. Compare 40 C.F.R. §124.36 with 40 C.F.R. §125.36. Where proceedings

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are divided between EPA and a State, or where a State official is required to make a decision on an EPA hearing record, differences in State and Federal procedures concerning admissibility of evidence, burdens of proof, and other factors could materially affect final action on the permit, prejudice parties to the proceedings, and complicate judicial review.

Because the Regional Administrator's determination under 40 C.F.R. §125.35 is the point in the permit proceeding at which EPA "issues" a permit which will be final, absent a request for an adjudicatory hearing, it is my opinion that the term "issuance of permits" in Section 402(c)(1) should not be interpreted to refer to an earlier event, such as the issuance of a draft permit under 40 C.F.R. §125.32.

In reaching the conclusion that the term "issuance of permits" in Section 402(c)(1) refers to the issuance of the Regional Administrator's determination, I am not unmindful of various statements in the legislative history of the FWPCA indicating that Congress did not intend for the Administrator to delegate to the States "bits, pieces, categories or other

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parts" of a permit program. Leg. Hist. at 261. 8/ Although the Utilities would interpret this directive as requiring the Administrator to turn over to the States, upon approval of a permitting program, all permit proceedings lacking final agency action, I think the better construction, consistent with the goals outlined above, is that it expresses Congress's expectation that half-completed EPA permit proceedings would not be transferred to State officials following approval of a State permit issuing program.

ISSUE OF LAW NO. II

Question Presented

Whether the provisions of the effluent guidelines for steam electric plants (40 C.F.R. Part 423) which were set aside by the Fourth Circuit's decision in Appalachian Power v. Train are null and void, and inapplicable to the permits in this proceedings?

If the steam electric power guidelines set aside in Appalachian Power v. Train are inapplicable to this proceeding,

8/ See also Section 402(c)(3), which requires the Administrator to withdraw a State permit issuing program in its entirety if it is not being properly administered in accordance with the requirements of Section 402(b).

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whether, in formulating effluent limitations on a case-by-case basis in this proceeding, the permit-issuing agency is required to justify each of the factors set forth in Sections 301 and 304 of the Act as applied to the facilities under consideration?

Conclusion

Those provisions of the effluent limitations and guidelines for steam electric power plants remanded in Appalachian Power Co. v. Train, 545 F.2d 1351 (4th Cir. 1976) are inapplicable to the permits in this proceeding. In the absence of applicable effluent limitations and guidelines the permit issuing authority is authorized to require "such conditions as . . . are necessary to carry out the provisions of [the] Act." Section 402(a)(1). In formulating permit requirements under Section 402(a)(1) which implement Section 301(b)(1)(A) or 301(b)(2)(A) the permit issuer must consider the factors set out in either Section 304(b)(1)(B) or 304(b)(2)(B).

Discussion

It is obvious that if a provision of an effluent limitation and guidelines regulation is overturned by a

-13-

Court of Appeals then that provision cannot be applied to a discharger in a Section 402 permit. Under such circumstances the permit issuing authority is authorized to proceed under Section 402(a)(1) of the Act, and issue a permit containing "such conditions as . . . are necessary to carry out the provisions of [the Act];" including conditions necessary to carry out Sections 301(b)(1)(A) or 301(b)(2)(A). See Decisions of the General Counsel No. 3 and 23. See also Decision of the General Counsel No. 10. 9/

As noted in Decision of the General Counsel No. 38, "[t]here can be no question but that the factors listed in Section 304(b)(1) are relevant to the imposition of effluent limitations in individual NPDES permits [under Section 402(a)(1)], just as they are to the establishment of industry-wide . . . regulations by the Administrator."

9/ Although a remanded provision can no longer be considered to be a binding regulation, it may nevertheless be highly relevant to the permit conditions to be imposed pursuant to Section 402(a)(1). Under appropriate circumstances a Section 402(a)(1) permit condition implementing Section 301(b)(1)(A) or 301(b)(2)(A) could be identical to the overturned regulation provision. Moreover, a permit issuer is not free to overturn determinations which were made in promulgating effluent limitations, guidelines and standards, but which were not disturbed by the remand of the Court of Appeals. See United States Steel Corp. v. Train, 10 E.R.C. 1001, 1016 (7th Cir. May 13, 1977).

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See also Decision of the General Counsel No. 40. However, the degree of consideration of such factors depends in such cases upon the amount of information available to the permit issuer, and, to the extent that the permit applicant seeks to require the permit issuer to "consider any particular factor during permit issuance, he is obligated to present evidence demonstrating the relevance of that factor to appropriate limits for his particular facility. He may not adopt the expedient course of remaining silent and then complaining of the inadequacy of the . . . consideration of such factors." Decision of the General Counsel No. 38. Moreover, the permit issuer must not ignore the fact that Congress intended effluent limitations imposed under Sections 301(b)(1)(A) and 301(b)(2)(A) to be as uniform as possible, even when issued pursuant to Section 402(a)(1). See Decision of the General Counsel No. 40. See also United States Steel Corp. v. Train, supra, n. 9.

ISSUE OF LAW NO. III

Question Presented

Whether a cooling tower is an "intake structure" within the meaning of Section 316(b)?

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Conclusion

A cooling tower is not an "intake structure" within the meaning of Section 316(b).

Discussion

As stated in Decision of the General Counsel No. 41, at 9, the definition of cooling water intake structures in the regulations implementing Section 316(b) (40 C.F.R. §402.11(a)) does not include cooling systems. Permit conditions imposed under Section 316(b) may only address the design, location, construction and capacity of cooling water intake structures.

ISSUE OF LAW NO. IVQuestion Presented

Whether effluent limitations under Sections 301 and 316(a) must be first established before intake structure conditions under Section 316(b) may be considered or developed?

Conclusion

Permit conditions may be imposed under Section 316(b) so long as there is a standard promulgated pursuant

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to Section 301 or Section 306 which could be applied to the point source discharger.

Permit conditions may be imposed under Section 316(b) independent of any proceeding to modify an effluent limitation under section 316(a) although the application of Section 316(a) and Section 316(b) should be coordinated to the extent possible.

Discussion

Section 316(b) of the FWPCA states:

Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

Effluent limitations and guidelines are established under Sections 301, 304 and 306. Under Section 316(a), thermal effluent limitations and guidelines may be modified on a case-by-case basis if a discharger can demonstrate that the thermal limitation is more stringent than necessary to provide for the protection and propagation of a balanced, indigenous population of fish, shellfish and wildlife.

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It is the position of the Utilities that Section 316(b) is not applicable to a point source until a final determination has been made under Section 316(a) since it cannot otherwise be determined what effluent limitation will be established and applicable to the point source within the meaning of Section 316(b). This position is based on a misunderstanding of the meaning of the terms "established" and "applicable" and Section 316(b) generally.

Upon promulgation, a national thermal effluent limitation "standard" under Section 301 or 306 is "established" and thereby "applicable" to a point source within the category governed by the effluent limitation. duPont v. Train, ____ U. S. ____, 97 S.Ct. 965, 975-76 (1977). The fact that the "standard" may be subsequently modified pursuant to Section 316(a) and that the "standard" has not yet been applied specifically to a point source through the issuance of a permit under Section 402 does not negate the fact that it has been established and is generally applicable to point sources within the industrial category to which the "standard" is applicable. Consistent with this interpretation, 40 C.F.R. §402.10

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provides that the regulations under Section 316(b) "are applicable to cooling water intake structures for point sources for which effluent limitations are established pursuant to section 301 or standards of performance are established pursuant to section 306 of the Act."

If Section 316(b) referenced Section 402 (which sets forth the NPDES permit process) or Section 316(a) instead of Sections 301 and 306, then it might make sense to defer consideration of Section 316(b) until an effluent limitation had been specifically applied to the point source through the permit process. Instead, the reference in Section 316(b) to Sections 301 and 306 clearly indicates that the application of restrictions under Section 316(b) is predicated only upon the promulgation of generally applicable national effluent limitations and guidelines, or, under Section 301(b)(1)(C), limitations necessary to meet water quality standards.

Of course, insofar as Section 316(a) and Section 316(b) address different parts of the same problem -- the environmental impacts associated with the withdrawal and discharge of "cooling water" -- it is desirable to

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implement conditions under Sections 316(a) and 316(b) in a unified proceeding where possible. Nonetheless, since Section 316(a) and Section 316(b) provide discrete remedies -- modifications of thermal effluent limitations and cooling water intake structures, respectively -- on the basis of independent statutory standards, there is no legal basis for predicated determinations under Section 316(b) on determinations under Section 316(a). See Decision of the General Counsel No. 41 at 3.

ISSUE OF LAW NO. V

Question Presented

Whether Section 316(b) is limited to new facilities because it applies only to "any standard," a term exclusively applicable to standards of performance under Section 306?

Conclusion

Section 316(b) applies to both new and existing facilities. The term "any standard" in Section 316(b) refers to the effluent limitations and standards promulgated pursuant to Section 301 and Section 306.

-20-

Discussion

It is clear that Section 316(b) is applicable to both new and existing sources for three reasons.

First, Section 316(b) specifically refers to Section 301 under which EPA is required to develop effluent limitations governing existing sources. This clear reference cannot be ignored.

Second, there is nothing either on the face of Section 316(b) or in the legislative history of the Act which indicates that Congress intended that Section 316(b) should be restricted to new sources. The withdrawal of cooling water can create serious adverse environmental impacts regardless of whether the water is being withdrawn by a new source or an existing source. There is no other provision in the FWPCA which allows existing sources to escape regulation altogether through any type of "grandfather" clause, and it would be erroneous to conclude that Congress intended to so limit the scope of Section 316(b).

Third, judicial decisions have pointed out that the term "standards" does not refer exclusively to Section 306 and that Section 316(b) encompasses "standards" under

-21-

Section 301 as well as under Section 306. See duPont v. Train, _____ U. S. _____, 97 S.Ct. 965, 978 (1977); American Meat Institute v. EPA, 526 F.2d 442, 450 (7th Cir. 1975).

ISSUE OF LAW NO. VI

Question Presented

Whether permit conditions pursuant to Section 316(b) are special conditions applicable to intake structures, or whether such Section 316(b) conditions may take the form of effluent limitations?

Conclusion

Permit conditions applied pursuant to the regulations under Section 316(b) may only restrict the design, location, construction or capacity of cooling water intake structures. These conditions are not effluent limitations since they cannot regulate the quality of the water discharged, or withdrawn, but rather may only regulate the technical nature and function of cooling water intake structures.

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Discussion

As stated in Decision of the General Counsel No. 41, at 11-13, restrictions imposed under Section 316(b) can only reflect the best technology available in terms of the design, location, construction and capacity of cooling water intake structures to minimize adverse environmental impact.

ISSUE OF LAW NO. VIIQuestion Presented

Whether permit conditions pursuant to Section 316(b) may restrict intake capacity to a rate less than the flow capacity necessary to achieve effluent limitations under Sections 301 and 316(a)?

Whether conditions pursuant to Section 316(b) may be imposed which are more stringent than necessary to achieve a balanced indigenous population of fish, shellfish and other aquatic wildlife in and on the receiving water?

Conclusion

Under Section 316(b), EPA may impose the best technology available with regard to the design, location,

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construction and capacity (volume of water withdrawn) 10/ of a cooling water intake structure in order to minimize (reduce to the smallest possible amount or degree) adverse environmental impacts -- significant or otherwise. Restrictions under Section 316(b) may be required independently of thermal effluent limitations applicable under Sections 301, 304, 306 or 316(a). However, EPA ultimately must demonstrate that the present value of the cumulative annual cost of modifications to cooling water intake structures is not wholly out of proportion to the magnitude of the estimated environmental gains (including attainment of the objectives of the Act and Section 316(b)) to be derived from the modifications.

10/ See Decision of the General Counsel No. 41, at 6-10. Since the magnitude of entrainment damage is frequently a function of the amount of water withdrawn, the only way that massive entrainment damage can be minimized in many circumstances is by restricting the volume of water withdrawn or by relocating the intake structure away from the endangered larvae. The latter approach is often not feasible. Thus, in certain cases, the only means of minimizing serious entrainment damage is to restrict the volume of water withdrawn. The common definition of capacity and the legislative history of the Act (See Leg. Hist. at 196-198) support an interpretation of the term "capacity" which allows EPA to so control entrainment damage.

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Discussion

The questions presented again ask whether actions under Section 316(b) are dependent upon, and basically subservient to, determinations regarding thermal effluent limitations under Sections 301 and 316(a). Section 316(b) is independent of thermal effluent limitations established pursuant to Section 301, 304, 306 or 316(a).

Thermal effluent limitations imposed pursuant to Section 301 or 306 and modified pursuant to Section 316(a) address the problem of the discharge of large volumes of heated water into the aquatic ecosystems. Section 316(b) addresses the problem of the withdrawal of large amounts of water from the aquatic ecosystem. Since water withdrawn from an aquatic ecosystem for cooling purposes can be discharged back into the same ecosystem or a nearby ecosystem at a much higher temperature, the two problems are associated insofar as they are created by the operation of one facility. Nonetheless, the solutions to the problems are necessarily different. Simply because cooling water could be discharged at a temperature which does not unduly disrupt the aquatic ecosystem does not mean that the withdrawal of the cooling water therefore

will also not have an adverse environmental impact. Recognizing this situation, Congress required EPA to establish thermal effluent limitations to prevent damage associated with the discharge of heated water and required EPA to establish regulations under Section 316(b) to minimize adverse environmental impact associated with the withdrawal of water for cooling purposes. As such, it would be contrary to Congressional intent, the overall objectives of the FWPCA, and common sense to restrict the application of solutions to the problems associated with the withdrawal of water to the solutions applied to prevent damage from the discharge of heated water.

However, to the extent possible, the Agency should recognize the relationship between the withdrawal of cooling water and thermal discharges. Under Section 316(a), the Agency may modify a thermal effluent limitation applicable to the point source under either Sections 301 or 306 if the discharger can demonstrate that the limitation is more stringent than necessary to assure the protection and propagation of the balanced indigenous population dependent upon the aquatic ecosystem. For example, the applicable thermal effluent limitations might

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necessitate a closed cycle cooling system. A less stringent thermal effluent limitation might allow an open cycle cooling system to be employed. If so, under Section 316(a) the overall impact of the less stringent thermal limitation must be considered. For example, a less stringent effluent limitation might lead to the withdrawal of a greater volume of cooling water and greater mortality of entrained organisms. Such circumstances should be taken into account in making determinations under Section 316(a).

Section 316(b) establishes a different test than Section 316(a). Under Section 316(a) the applicant has the ultimate burden of persuasion and economic considerations are not appropriate; under Section 316(b) EPA has the ultimate burden of persuasion and economic considerations are appropriate. Section 316(a) speaks in terms of a "balanced indigenous population." Section 316(a) thus permits an adverse environmental impact so long as the impact does not interfere with the protection and propagation of the balanced indigenous population in the aquatic ecosystem. Any adverse environmental impact must be minimized under Section 316(b). (See Decision of the General Counsel No. 41 at 12.) However, the Administrator has

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determined that this standard must be tempered by economic considerations. Thus, in his decision In the Matter of Public Service Co. of New Hampshire (the Seabrook Decision), the Administrator stated (at p. 13):

. . . I do not believe that it is reasonable to interpret Section 316(b) as requiring use of technology whose cost is wholly disproportionate to the environmental benefit to be gained.

It must be stressed, however, that this test is a limited one, for the Administrator in the same decision (at p. 12) rejected the notion that a full cost/benefit analysis is required under Section 316(b).

Any cooling water intake technology may be imposed under Section 316(b), despite a successful Section 316(a) demonstration, if the cost of the technology is not "wholly disproportionate" to the environmental gains to be derived from the application of the technology. As a practical matter, though, it would be more difficult for the Agency to show, for example, that the imposition of a \$25 million technology under Section 316(b) is not "wholly disproportionate" to the magnitude of the adverse environmental impact if the discharger has shown under Section 316(a) that the overall impact of a less stringent thermal effluent limitation does not interfere with the protection and propagation of the balanced indigenous population.

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ISSUE OF LAW NO. VIIIQuestion Presented

Whether EPA has the burden of presenting a prima facie case under Sections 301 and 316(b)?

Conclusion

The concept of a "prima facie" case, borrowed from the law of evidence applicable to trials at law, has little relevance to the obligations of EPA and other parties in making the administrative determinations called for by Sections 301 and 316(b). However, EPA must clearly summarize the legal and factual basis for a permit condition so as to allow a permittee and other affected persons adequate opportunity to comment upon a draft permit and, if an adjudicatory hearing is held, to prepare for such hearing. Although EPA may supplement the basis for the permit before the permit becomes final, fundamental fairness requires that the parties and the public be reasonably apprised of the rationale underlying a permit condition.

Discussion

An "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all

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circumstances, to apprise interested parties of the pendency of the action and allow them to present their objections." 11/ Reasonable notice is also part of the developing "common law" of administrative procedure. 12/ EPA accordingly is obligated to give clear written notice of the basic factual and legal determinations which underlie the permit conditions at issue. The detail of the notice must be related to the complexity and significance of the issues. Notice should be straightforward so as to provide a clear explanation of EPA's reasoning. A staff memorandum to the file, for example, which is subsequently released without explanation cannot satisfy EPA's obligation to provide adequate notice since it does not purport to be an official Agency rationale for a permit condition and it thus forces the

11/ Convey v. Town of Somers, 351 U.S. 141, 146 (1956), citing Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950). See also Mathews v. Eldridge, U.S. 96 S.Ct. 898, 909 (1976); NLRB v. Majestic Weaving, 355 F.2d 854, 861 (2d Cir. 1966); L & M Industries v. Kenter, 458 F.2d 968, 971 (2d Cir. 1972); 5 U.S.C. §554(b); Friendly, "Some Kind of Hearing," 123 U.Pa.L.Rev. 1267, 1280-81 (1975).

12/ Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850 (D.C. Cir. 1970); International Harvester Co., Inc. v. Ruckelshaus, 478 F.2d 615, 631-2 (D.C. Cir. 1973); Portland Cement v. Ruckelshaus, 486 F.2d 375, 393-4 (D.C. Cir. 1973).

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permittee to guess at its significance. Ideally, the notice should accompany the issuance of a draft permit under 40 C.F.R. §125.31. At a minimum, it must allow the parties adequate time to present their case at any adjudicatory hearing.

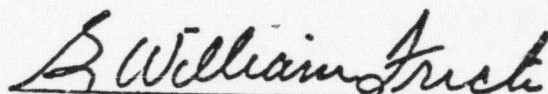
EPA procedures do provide for the presentation at a prehearing conference of a "brief narrative summary" of the anticipated testimony of each party's witness (40 C.F.R. §125.36(h)(3)). Furthermore, the "results of any conference are to be summarized in writing by the Presiding Officer and made part of the record" (40 C.F.R. §125.36(h)(5)). It is not clear from the briefs which are before me whether the legal and factual basis for the permits at issue in this proceeding was developed and recorded in the course of the prehearing conference. Certainly, though, the prehearing conference provides a vehicle for an articulation of the legal and factual basis for the permit which would allow EPA to satisfy the requirements articulated in the cases cited above.

Although clear notice prior to an adjudicatory hearing of the basis for a permit is necessary, EPA is not required to present an elaborate discussion of its main case. However, EPA's notice should be more detailed in

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complex and highly controversial cases impacting a large number of persons or involving large sums of money. In holding adjudicatory hearings, EPA is not legally subject to pre-trial discovery, 13/ though, of course, it may consent to such discovery. EPA's notice of the basis for a permit also does not preclude the Agency from a further articulation of its reasoning prior to the final issuance of the permit 14/ nor foreclose the presentation of additional evidence, particularly in response to the case of the permittee.

Dated: JUL 29 1977


G. William Frick
General Counsel

13/ See Silverman v. Commodity Futures Trading Commission,
549 F. 2d 28, 33 (7th Cir. 1977); Friendly, supra n. 11 at
1282, n. 81.

14/ See Local 814, International Brotherhood of Teamsters,
v. NLRB, 546 F.2d 989, 992 (D.C. Cir. 1977).

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORPORATION; CONSOLIDATED
EDISON COMPANY OF NEW YORK,
INC.; ORANGE AND ROCKLAND
UTILITIES, INC.; and POWER
AUTHORITY OF THE STATE OF
NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, ECKARDT C. BECK,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
and PETER A.A. BERLE,

Defendants.

APPENDIX A TO COMPLAINT

LEBOEUF, LAMB, LEIBY & MACRAE

140 BROADWAY

NEW YORK, N. Y. 10005

212-269-1100

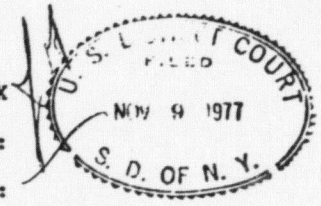
ATTORNEYS FOR

Plaintiffs

LEBOEUF, LAMB, LEIBY & MACRAE
RECORDS DEPT.

CIRCULATE:	✓
GSPB	✓
JF	✓
RJG	✓

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK



CENTRAL HUDSON GAS & ELECTRIC CORPORATION, :
 CONSOLIDATED EDISON COMPANY OF NEW YORK, :
 INC.; ORANGE AND ROCKLAND UTILITIES, INC., :
 and POWER AUTHORITY OF THE STATE OF :
 NEW YORK, :

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION :
 AGENCY, DOUGLAS M. COSTLE, as Admini- :
 strator, U.S. Environmental Protection :
 Agency, ECKARDT C. BECK, Regional Admini- :
 strator, Region II, U.S. Environmental :
 Protection Agency, NEW YORK STATE :
 DEPARTMENT OF ENVIRONMENTAL CONSERVATION, :
 and PETER A.A. BERLE, Commissioner, New :
 York State Department of Environmental :
 Conservation, :

Defendants.

4 ORDER
 : STIPULATION EXTENDING
 : TIME TO RESPOND OR
 : MOVE

: 77 Civ. 4870 (RLC)

MICROFILM

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for the respective parties that the time for defendants New York State Department of Environmental Conservation and Peter A.A. Berle to answer or move with respect to the complaint herein be and the same hereby is extended to December 5, 1977.*

Dated: New York, New York
 October 31, 1977.

LeBOEUF, LAMB, LEIBY &
 MacRAE

LOUIS J. LEFKOWITZ
 Attorney General of the
 State of New York

By *G.S. Peter Bergen*
 G.S. PETER BERGEN
 (A Member)
 Attorneys for plaintiffs

By *Paul S. Shemin*
 PAUL S. SHEMIN
 Assistant Attorney General
 Attorney for Defendants
 N.Y.S. Department of Environmental
 Conservation and Peter A.A. Berle

* This stipulation does not extend said defendants' time to answer or reply to any motion for summary judgment filed by plaintiffs herein prior to the filing of an answer or motion with respect to the complaint herein by said defendants.

SERVED _____ BY _____
 RECEIVED _____ BY _____
☐ HAND ☐ MAIL
 FILED _____ BY _____
 LLL & MENTRY
11/4/77

DOCUMENT No.
 #5

SO ORDERED 11/4/77
1/10/78
 NOTED ON
 MICH. C. CLK'S
 CALENDAR

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;
ORANGE AND ROCKLAND UTILITIES, INC; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U.S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

-----X

Index No.

: 77 Civ. 4870
(R.L.C.)

NOTICE OF MOTION
FOR SUMMARY JUDGMENT

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Attorneys for Plaintiffs
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New York, New York 10005
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Of Counsel:

G.S. Peter Bergen
Jacob Friedlander
Robert J. Glasser
Thomas E. Mark

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
CENTRAL HUDSON GAS & ELECTRIC CORPORATION; :
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; :
ORANGE AND ROCKLAND UTILITIES, INC.; and :
POWER AUTHORITY OF THE STATE OF NEW YORK, :

Plaintiffs, :

-against- :

NOTICE OF MOTION

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, :
DOUGLAS M. COSTLE, as Administrator, U.S. :
Environmental Protection Agency, :
ECKARDT C. BECK, Regional Administrator, :
Region II, U.S. Environmental Protection :
Agency, :
NEW YORK STATE DEPARTMENT OF :
ENVIRONMENTAL CONSERVATION, and :
PETER A.A. BERLE, Commissioner, New York :
State Department of Environmental :
Conservation, :

: Index No.
77 Civ. 4870
: (R.L.C.)

Defendants. :

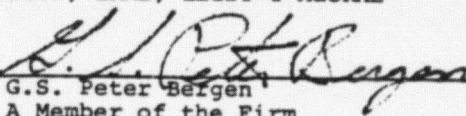
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S I R S :

PLEASE TAKE NOTICE, that upon the Complaint in this action, the annexed affidavit of Joseph D. Block, dated October 31, 1977, Plaintiffs' Statement Pursuant to General Rule 9(g), and Plaintiffs' Memorandum in Support of its Motion for Summary Judgment, the undersigned will move this Court on Friday, the 11th day of November 1977, at 10:00 a.m., or as soon thereafter as counsel may be heard, before the Honorable Robert L. Carter of the United States District Court for the Southern District of New York, at Room 444, United States Courthouse, Foley Square, New York, New York for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure for: (1) a declaratory judgment declaring that jurisdiction over the pending proceeding in the Environmental Protection Agency (EPA) entitled In the Matter of National Pollutant Discharge Elimination System Permit for Central

Hudson Gas & Electric Corporation, et al (Docket No. II-C/WP-77-1)
was transferred to the New York State Department of Environmental
Conservation from the United States Environmental Protection
Agency by reason of 33 U.S.C. §1342(c) on and after October 29,
1975; and (2) injunctive relief enjoining defendant EPA from
continuing the issuance of NPDES permits in said proceeding
above mentioned; and (3) such other and further relief as this
Court deems just and proper.

Yours etc.,

LeBOEUF, LAMB, LEIBY & MacRAE

By 

G.S. Peter Bergen
A Member of the Firm
Attorneys for Plaintiffs
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140 Broadway
New York, New York 10005
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Dated: New York, New York
November 1, 1977

TO: Clerk,
United States District Court
for the Southern District of New York

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New York, New York 10047

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC;
ORANGE AND ROCKLAND UTILITIES, INC; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U.S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

: AFFIDAVIT OF
: JOSEPH D. BLOCK
: IN SUPPORT OF
: MOTION FOR SUM-
: MARY JUDGMENT

: Index No.
: 77 Civ. 4870
: (R.L.C.)

-----X
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH D. BLOCK, being duly sworn, deposes and
says:

I am an Executive Vice President - Administration of
Consolidated Edison Company of New York, Inc. (Con Edison), one
of the plaintiffs herein and I make this affidavit in support
of plaintiffs' motion for summary judgment in the herein
action. Plaintiffs contend that as a matter of law, pursuant
to §402(c) of the Federal Water Pollution Control Act (the
"Act"), jurisdiction to issue NPDES permits to plaintiffs has
been transferred by the United States Environmental Protection
Agency (the "EPA") to the New York State Department of Environ-
mental Conservation (the "NYDEC") and plaintiffs seek to have

this Court enter a declaratory judgment to this effect and enjoin and prohibit EPA from continuing to act outside of its legal jurisdiction in the issuance of NPDES permits to plaintiffs.

2. I am a member of the Bar of the States of Illinois and New York and I am admitted to practice in various federal courts including the Southern District of New York.

3. I have been employed as an officer of Con Edison since August 1, 1970. In my capacity as an Executive Vice President of Con Edison I am responsible for legal matters concerned with the licensing and permits for power plants operated by Con Edison; I have also kept myself advised as to the status of license and permit matters affecting other power plants of which Con Edison is a co-owner, but not the operator. As a result, I am fully familiar with the facts and circumstances upon which this action is based and have personal knowledge of the facts described herein.

4. Plaintiff Central Hudson Gas & Electric Corporation ("Central Hudson") is a New York corporation engaged in, among other things, generation and distribution of electricity in parts of Putnam, Dutchess and other counties in New York State pursuant to regulation by the New York State Public Service Commission ("PSC"), and maintains its principal offices at 284 South Avenue, Poughkeepsie, New York 12602.

5. Plaintiff Con Edison is a New York corporation engaged in, among other things, the generation and distribution of electricity in New York City and parts of Westchester County, pursuant to regulation by the PSC, and maintains its principal offices at 4 Irving Place, New York, New York 10003.

6. Plaintiff Orange and Rockland Utilities, Inc. ("Orange and Rockland") is a New York corporation engaged in, among other things, the generation and distribution of electricity in Orange and Rockland Counties and elsewhere pursuant to regulation by the FSC and maintains its principal offices at One Blue Hill Plaza, Pearl River, New York 10965.

7. Plaintiff Power Authority of the State of New York ("Power Authority") is a corporate municipal instrumentality and political subdivision of the State of New York, organized pursuant to the Laws of the State of New York, [See, N.Y. Public Authorities Law, §1000 et seq. (McKinney's 1970)], is engaged in the generation and wholesale sale of electricity, and maintains its principal offices at 10 Columbus Circle, New York, New York 10019.

8. Defendant EPA is an agency of the United States organized pursuant to Reorganization Plan 3 of 1970, 3 C.F.R. 1072 (1966-1970 Compilation), reprinted in 5 U.S.C., app., at 609 (1970).

9. Defendant Douglas M. Costle is the Administrator of EPA and maintains his office at Fourth and M Streets, S.W., Washington, D.C. 20460.

10. Defendant Eckardt C. Beck is the Regional Administrator of Region II of EPA, and maintains his office at 26 Federal Plaza, New York, New York 10007.

11. Defendant NYDEC is an agency of the State of New York, maintains its principal offices at 50 Wolf Road, Albany, New York 12233, and maintains an office at 2 World Trade Center, New York, New York 10097.

12. Defendant Peter A.A. Berle is the Commissioner of NYDEC, and maintains his office at 50 Wolf Road, Albany, New York 12233.

13. Plaintiff Central Hudson operates Roseton Generating Station, a power plant which consists of two oil-fired steam-electric generating units of 600 megawatts (mw) capacity each, located on the west bank of the Hudson River near Roseton, in Orange County, New York. Roseton Generating Station is owned by Niagara Mohawk Power Corporation and plaintiffs Central Hudson and Con Edison as tenants-in-common.

14. Plaintiff Orange and Rockland operates Bowline Point Generating Station, which consists of two 600 mw oil-fired steam-electric generating units located on the west bank of the Hudson River near Haverstraw, in Rockland County, New York. Bowline Point Generating Station is owned by plaintiffs Orange and Rockland and Con Edison as tenants-in-common.

15. Plaintiff Con Edison owns and operates Indian Point Unit 2, an 873 mw nuclear steam-electric generating unit located on the east bank of the Hudson River near Buchanan, in Westchester County, New York.

16. Plaintiff Power Authority owns Indian Point Unit 3. Plaintiff Power Authority acquired title to Indian Point Unit 3 from Con Edison on December 31, 1975. Indian Point Unit 3 is a 965 mw nuclear steam-electric generating unit located on the same site as, and adjacent to, Indian Point Unit 2. Indian Point Unit 3 is operated by plaintiff Con Edison.

17. Each unit of the above power plants generates electricity by causing the armature of a generator to rotate in a magnetic field. The rotational force is produced by a

steam-driven turbine, which converts heat energy from steam into rotational mechanical energy. The steam is produced by burning fuel such as oil, or from a nuclear reaction. Thermodynamic laws require that a portion of the heat energy thus produced be removed from the electric generating unit by a cooling system. Each of these electric generating units currently employs what is known as a once-through cooling system: Pumps housed in an intake structure located on the river bank withdraw water from the Hudson River, circulate the water through condensers in the power plant where heat is transferred to the cooling water, and then return the cooling water to the river at a slightly increased temperature.

18. Since the effective date of the Federal Water Pollution Control Act Amendments of 1972, PL 92-500, effective October 10, 1972, there have been pending before defendant EPA applications for permits pursuant to §402 of the Act for discharges from Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station; and since July 9, 1974, there has been pending before defendant EPA a similar application for Indian Point Unit 3.

19. Each of these applications seeks determination of the terms and conditions upon which operation of plaintiffs' power plants will be permitted, in accordance with the requirement of Section 301(b)(2) of the Act that "best available technology economically achievable" be achieved by July 1, 1983, and other provisions of the Act. To date, no final determination has been reached with respect to plaintiffs' power plants.

20. In the cases of Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station, the EPA Region II Administrator, Gerald Hansler (predecessor of defendant Eckardt C. Beck), caused to be prepared for each respective plaintiff operating such unit a "Notice of Issuance of Final Determination" dated February 28, 1975. With respect to the pending permit application in the case of Indian Point Unit 3, said EPA Region II Administrator Hansler caused to be prepared a "Notice of Issuance of Final Determination" under date of July 3, 1975.

21. The "Notices" referred to in Paragraph 20 are attached hereto as Exhibits A (Indian Point Unit 2), B (Indian Point Unit 3), C (Bowline Point Units 1 and 2), and D (Roseton Units 1 and 2) in the case of each of the aforementioned generating units, provided in relevant part:

"Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final national pollutant discharge elimination system (NPDES) permit...to discharge pollutants into the waters of the United States.

* * *

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975 [on July 31, 1975 in the case of Indian Point Unit 3] unless an Adjudicatory Hearing is granted pursuant to 40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974)... (Emphasis added).

Enclosed with each Notice was a "Final Determination" in the form of a document entitled "National Pollutant Discharge Elimination System Permit, Discharge Permit" (hereinafter referred to for convenience as an "NPDES permit"). Copies of each permit are also included with Exhibits A, B, C, and D hereof.

22. In the case of Central Hudson's Roseton units, and Orange and Rockland's Bowline units, the NPDES permits provide that no later than July 1, 1981, plaintiffs Central Hudson and Orange and Rockland shall reduce the discharge of heat from Roseton and Bowline by more than 90%.

23. In the cases of Indian Point Units 2 and 3, the NPDES permits would likewise require reduction of heat discharged from those units by more than 90%, to be accomplished under the Indian Point Unit 2 permit by no later than May 1, 1979, and under the Indian Point Unit 3 permit by no later than September 15, 1980.

24. Compliance with the requirements described in Paragraphs 22 and 23 in each case would mean, as a practical matter, that plaintiffs would be required to install, at tremendous cost, a cooling tower (a type of "closed cycle cooling system") at each of the electric generating units at the power plants herein, and to abandon the once-through cooling systems now in use at those power plants. Natural draft cooling towers (the preferred kind of closed-cycle cooling system) suitable for plaintiffs' electric generating units would necessarily be very large and massive. They would be circular, chimney-like structures, which would emit steam vapor when in operation. At the base, each tower would be in excess of 300 feet in diameter. Each tower would be between 390 and 560 feet in height (depending upon the unit in question and design conditions). For purposes of comparison, the bulk of such towers might be compared to that of a skyscraper 40 to 45 stories high. An architectural rendering of natural draft

cooling towers at Bowline Point generating station and photographs of the Indian Point and Roseton Stations with cooling towers "dubbed in" are attached as Exhibit E. Construction of such towers, two each at Bowline, Indian Point and Roseton would be a massive and time-consuming engineering undertaking. It would also be enormously costly. I am advised that engineers have estimated the capital cost of constructing the six proposed cooling towers to be in excess of \$358 million, and that they further estimated that the annual costs of such towers, taking into account not only depreciation and debt service, but also other relevant factors, is in excess of \$100 million. I am further advised that the energy required to operate the six towers would be equivalent to the energy content of about 720,000 barrels of oil each year.

25. Upon receipt of the Notices of Issuance of Final Determination and proposed NFDES permits described in Paragraph 21, each plaintiff timely requested an adjudicatory hearing with respect to each generating unit it was then operating, and demanded that EPA advise plaintiffs in detail of the reasons why EPA proposed to require costly cooling towers. No official explanation has ever been supplied by EPA.

26. In the case of Central Hudson's Roseton Generating Station, EPA Region II Administrator Hansler thereafter granted an adjudicatory hearing to Central Hudson by letter dated May 1, 1975, a copy of which is attached hereto as Exhibit F. In the case of plaintiff Orange and Rockland's Bowline Point Generating Station, EPA Region II Administrator Hansler granted Orange and Rockland an adjudicatory hearing by letter dated June 6, 1975, a copy of which is attached hereto

as Exhibit G. In the case of plaintiff Con Edison's Indian Point Unit 2, EPA Region II Administrator Hansler granted Con Edison an adjudicatory hearing by letter dated May 8, 1975, a copy of which is attached hereto as Exhibit H. In the case of plaintiff Power Authority's Indian Point Unit 3, EPA Region II Administrator Hansler granted Con Edison (the Power Authority's predecessor in title) an adjudicatory hearing by letter dated August 28, 1975, a copy of which is attached hereto as Exhibit I. In each case, public notice of the granting of adjudicatory hearing was issued by defendant EPA.

27. Each public notice granting an adjudicatory hearing in each of the above cases allowed a hearing on (among other things) the contested conditions in each proposed permit which would have the effect of requiring installation of cooling towers at the respective generating units. The granting of the adjudicatory hearings on these permit conditions had the effect of staying and not issuing the contested conditions of the permits.

28. During the time period commencing on or about April 16, 1974 and extending to October 28, 1975, and while plaintiffs' permit applications were being reviewed by EPA Region II, as described above, defendant NYDEC submitted to EPA under §402(b) of the Act a permit program established under State law to be administered by NYDEC for navigable waters in New York State. Effective October 29, 1975, EPA determined that NYDEC's authority to administer New York State's permit program for discharges into all navigable waters within New York State was adequate to carry out the requirements of the Act, and EPA approved the permit program submitted by New York

State. See 40 Fed. Reg. 54462 (Nov. 24, 1975), attached hereto as Exhibit J.

29. However, even though EPA had transferred the permit program to NYDEC on October 29, 1975, on August 4, 1976, EPA Region II requested assignment of an Administrative Law Judge for the adjudicatory hearings described above. Thereafter, an Administrative Law Judge ("EPA ALJ") was assigned to preside at the adjudicatory hearings, and the individual adjudicatory hearings were consolidated, for hearing purposes, by the EPA ALJ's order of February 25, 1977.

30. On February 22, 1977, at the initial pre-hearing conference held by the EPA ALJ, counsel for plaintiffs objected to continuance of the proceeding before EPA on the ground that jurisdiction over issuance of NPDES permits to plaintiffs had been transferred on October 29, 1975 to New York State by operation of law, and that further proceedings by defendant EPA would only further delay the date upon which plaintiffs would be afforded the opportunity to be heard provided in §402 of the Act with respect to the proposed permit conditions effectively requiring cooling towers.

31. Thereafter, at plaintiffs' request, pursuant to EPA Rules, 40 C.F.R. §125.36(m) (1976), the EPA ALJ referred to the EPA General Counsel the legal question whether jurisdiction to issue these permits lies in EPA or NYDEC, and certain other legal questions raised by plaintiffs.

32. The General Counsel of EPA responded to the referred legal issue on jurisdiction, and the other referred issues, in Decision of the General Counsel on Matters of Law Pursuant to 40 C.F.R. §125.36(m), No. 63, dated July 29, 1977

and served on plaintiffs on August 11, 1977 ("OGC 63"), a copy of which is annexed to the Complaint in this action as Exhibit A.

33. In OGC 63, the EPA General Counsel ruled that EPA's jurisdiction to issue the permit conditions contested by plaintiffs in their requests for adjudicatory hearings was not transferred to NYDEC even though NPDES permit issuing authority was transferred to NYDEC on October 29, 1975, pursuant to §402(b) of the Act. OGC 63 (Exhibit A to the Complaint) at 1-3.

34. In February 1977 the EPA ALJ established a schedule for the administrative hearings now pending before EPA Region II, which called for the filing of plaintiffs' direct testimony on July 11, 1977, and for cross-examination of that testimony commencing on September 7, 1977; for EPA Region II Staff to file its responsive testimony on November 1, 1977 (followed by cross-examination on the EPA Staff testimony commencing on December 6, 1977); and for plaintiffs to file any rebuttal testimony on January 31, 1978 (followed by cross-examination thereon commencing on February 28, 1978).

35. Plaintiffs, while reserving their objection to EPA's retention of jurisdiction, filed their direct testimony in the EPA administrative hearings on July 11, 1977, in accord with the procedural schedule established by the EPA ALJ.

36. Hearings did not proceed on September 7, 1977. EPA Region II Staff, on August 17, 1977, moved the EPA ALJ to delay the time previously fixed for commencement of cross-examination of the plaintiffs' direct testimony by some 160 days, with the major cross-examination of plaintiffs'

direct testimony to begin not earlier than February 13, 1978, a delay of seven months; and also to delay the other procedural dates previously fixed by the EPA ALJ by 160 days. The EPA ALJ ruled that hearings will be postponed until December 6, 1977, when cross-examination on a limited portion of the direct testimony filed by plaintiffs will commence. Hearings will then adjourn until 1978.

37. EPA Region II has failed to provide plaintiffs with an adequate explanation of the reasons why EPA Region II believes that the enormous cost of installing cooling towers at plaintiffs' power plants is justified, even though plaintiffs have repeatedly requested such an explanation, and even though the EPA General Counsel agrees (OGC 63, at 28-31) that such an explanation is necessary to provide adequate notice and due process to plaintiffs. EPA Region II's failure to provide plaintiffs with a clear explanation of the bases for the permits proposed by Region II has delayed and hindered plaintiffs' preparation for the adjudicatory hearings now pending before EPA Region II.

38. Under the present procedural schedule for EPA hearings, cross-examination will not commence until December 1977. No evidence has yet been officially received into the hearing record. Transfer of hearings from EPA to NYDEC will not interfere with orderly development of a hearing record or cause duplication of proceedings before NYDEC.

39. EPA does not have jurisdiction under the Act to issue the contested conditions of the permits in the pending EPA permit proceedings. Jurisdiction lies in NYDEC, by reason of the EPA approval of the New York State permit

program effective October 29, 1975, and by reason of §402(c) of the Act, which requires the EPA Administrator to suspend issuance of permits within 90 days following submission of a State permit program which meets the requirements of the Act.

40. Since defendant EPA lacks jurisdiction, further proceedings in the pending administrative hearings before defendant EPA are void and a nullity.

41. By continuing to act with respect to the issuance of NPDES permits to plaintiffs, even though it lacks jurisdiction to do so, EPA is causing substantial injury to plaintiffs. Plaintiffs are obligated under the Act to install whatever facilities might ultimately be determined to be required to carry out the purposes of the Act by no later than July 1, 1983. EPA contends that costly, energy-consuming, cooling towers should be installed. However, permit conditions embodying these contested provisions may not issue until plaintiffs are granted an opportunity to be heard, before the agency having jurisdiction, on their contentions that cooling towers are not required by the Act.

42. Substantial time, on the order of 5 to 6 years or more would be required to construct and install the six cooling towers which EPA proposes, if they were all ultimately required to be constructed. The construction schedules for the respective towers would have to be carefully coordinated to assure maintenance of a reliable electric power supply to plaintiffs' service areas. This would have to be done by scheduling periods of shut-down of each unit, which is necessary to convert from an open-cycle to a closed-cycle cooling system, in a manner which avoids outages of any generating unit

during summer peak periods of electricity demand, and by avoiding, to the extent possible, more than one unit being shut down at one time. On the other hand, a single tower at a site other than Indian Point (where there are difficult foundation conditions) would still take between 3 to 4 years to construct.

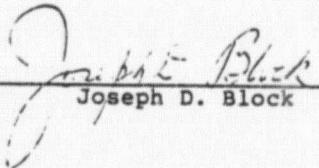
43. If plaintiffs were ultimately required to install a cooling tower or towers, initial work would have to begin well before July 1, 1983. It is critical that hearings commence as soon as possible before NYDEC, the administrative agency authorized by law to determine whether cooling towers are required by the Act at plaintiffs' power plants.

44. Unless the question of EPA jurisdiction is resolved now, the jurisdictional issue will remain as a latent defect in all further proceedings before EPA. Future litigation of the jurisdictional question, and duplicative agency proceedings, are inevitable in the event the EPA proceedings continue without immediate determination of the jurisdiction question. Following final EPA decision, any party to the adjudicatory hearings will have the opportunity to appeal and to obtain judgment that EPA proceeded without jurisdiction and that EPA's decision was nugatory. Duplicative agency proceedings will delay a final decision upon which plaintiffs can rely.

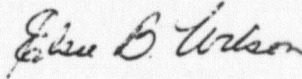
45. EPA's continued unlawful retention of jurisdiction will delay commencement of proceedings before NYDEC, to the detriment and substantial injury of plaintiffs, because there will not be sufficient time to complete the proceedings before NYDEC, and to construct any facilities as NYDEC may ultimately determine are required to carry out the purposes of

the Act, between the time NYDEC's determinations become final and the July 1, 1983 date established in the Act, unless the proceedings are transferred now to NYDEC.

46. Plaintiffs are now faced with the following alternatives, each of which would cause them substantial irreparable harm: a) Committing enormous amounts of money, at the consumers' expense, to comply with EPA's unissued permit conditions even though plaintiffs have not had an opportunity to be heard by the agency having jurisdiction; or b) risking heavy enforcement penalties after July 1, 1983 as a result of the lack of sufficient time before that date for plaintiffs to construct such facilities, if any, as ultimately may be required following hearing before the agency having jurisdiction; or c) closing down one or more of their power plants, which would adversely affect the reliability of electric supply in New York, to the detriment of the public which relies on electric energy as a basic necessity.


Joseph D. Block

Sworn to before me this
31st day of October, 1977.



ELSIE B. WILSON
NOTARY PUBLIC, State of New York
No. 03-4515803 Qualified in Bronx Co.
Certificate filed in New York County
Commission Expires March 30, 1979

JA 087

Exhibit A

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10007

JA 088

NOTICE OF ISSUANCE OF FINAL DETERMINATION

No. NPDES 75-149

Date: FEB 28 1975

Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final National Pollutant Discharge Elimination System (NPDES) permit to Consolidated Edison Company of New York, Inc.

to discharge pollutants into waters of the United States. Public Notice of the tentative determinations contained in the permit was given on June 28, 1974 under NPDES No. 74-1111. These tentative determinations were based on Proposed Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category as published at 39 Fed. Reg. p. 8294 et. seq. (March 4, 1974), the certification received from the State of New York Department of Environmental Conservation, and §316(b) of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, "the Act"), 33 U.S.C. §1341. Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category were published at 39 Fed. Reg. p. 36198 et. seq. (October 8, 1974). The limitations contained in the Final Determination were arrived at by application of the Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category, the certification received from the State of New York Department of Environmental Conservation pursuant to §401 of the Act, the Criteria Governing Thermal Discharges, 6 NYCRR Part 704, as approved by Region II, EPA pursuant to § 303 of the Act, and §316(b) of the Act.

Application of the above-referenced Final Guidelines and Standards, the certification received from the New York State Department of Environmental Conservation and the Criteria Governing Thermal Discharges referenced above has resulted in changes from the limitations and schedules of compliance as they appeared in the Public Notice mentioned above. The significant changes are as follows:

(a) Chemical effluent limitations contained in the Draft Permit have been revised according to the Final Effluent Guidelines and Standards to reflect an average concentration of 30 mg/l Total Suspended Solids, rather than 15 mg/l. Maximum limitations for Total Iron and Total Copper have been revised to reflect a concentration of 1 mg/l as compared to 2 mg/l in the Draft Permit.

The company has received a permit for Indian Point Generating Station, Units 1 and 2, which have a total nameplate capacity of 1288 MWe (275 MWe for Unit 1 and 1013 MWe for Unit 2). Unit 1 is as a combined nuclear and oil-fired generating plant; Unit 2 is a nuclear generating plant. Both units have pressurized water nuclear reactors which use uranium dioxide as fuel; Unit 1 also has an oil-fired superheater.

JA 083

There are five discharges resulting from the operation of Units 1 and 2. Discharge 001 is a common discharge for both units, the effluents of which enter the receiving waters through a submerged multiport diffuser. The discharge has a maximum flow of 1,189,000 gallons per minute, of which 1,120,000 gallons per minute is condenser cooling water, 68,000 gallons per minute is service cooling water, and the remainder is boiler and steam generator blowdown, evaporator blowdown, ion exchanger regeneration wastes, radioactive liquid wastes, etc. Discharges 005 and 006 result from the washing of the intake travelling screens of Units 1 and 2, respectively. Coarse debris removed from the intake screens is disposed of in a local refuse dump. Fish and non-separable solid material are returned to the Hudson River via a fish return line.* Discharges 002 and 003, which do not utilize fish return lines, are used only when Discharges 005 and 006, respectively, are not operational.* The total maximum flow of the intake screen backwash discharges is approximately 720,000 gallons per day.

All effluents are discharged into the Hudson River at points approximately 5 miles downstream from the Bear Mountain Bridge. The Hudson River at the points of discharge has a New York State water quality classification of Class SB, for which the best usage is defined as bathing and any other usages, except shell-fishing for market purposes.

* At the present time fish associated with Discharges 002, 003, 005 and 006 are collected for required scientific studies.

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975 unless an Adjudicatory Hearing is granted pursuant to 40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974).

Interested persons may request that such an Adjudicatory Hearing be held. Any request for an Adjudicatory Hearing must meet the requirements of the regulations cited above and must be received by the Environmental Protection Agency at the above address no later than ten days from the date of this Notice.

The permittee has submitted to EPA a timely request for the imposition of alternative effluent limitations relative to the thermal limitations imposed by the Final Effluent Guidelines and Standards for the Steam Electric Generating Point Source Category referenced above. After careful consideration of the data submitted by the permittee with respect to Section 316(a) of the Act, the Regional Administrator has determined that the information which the permittee has submitted is insufficient to determine whether or not the alternative thermal effluent limitations requested will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made. However, the Regional Administrator has determined that closed-cycle cooling is required in order to minimize adverse environmental impact, pursuant to Section 316(b) of the Act.

A copy of the Final Determination and other available information may be obtained by mail from the Status of Compliance Branch, EPA Region II, at the above address, or by calling (212) 264-9381, or in person between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday. Other forms and relevant documents may be inspected at that office. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Permit No.: NY0004472

JA 091

Name of Permittee: Consolidated Edison Company of New York, Inc. - Indian Point Generating Station (Units 1 and 2)

Effective Date: March 31, 1975

Expiration Date: March 30, 1980

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
DISCHARGE PERMIT

In reference to the above application for a permit authorizing the discharge of pollutants in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, October 18, 1972 (33 U.S.C. §1251-1376) (hereinafter referred to as "the Act"), Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003

(hereinafter referred to as "the permittee")

is authorized by the Regional Administrator, Region II, U. S. Environmental Protection Agency
to discharge from Indian Point Generating Station (Units 1 and 2)

Buchanan, Westchester County, New York

to Hudson River

in accordance with the following conditions.

1. All discharges authorized herein shall be consistent with the terms and conditions of this permit; facility expansions, production increases or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application, or if such new or increased discharge does not violate the effluent limitations specified in this permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.

2. After notice and opportunity for a public hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

3. Notwithstanding Condition 2 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, the Regional Administrator shall revise or modify this permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

4. The permittee shall allow the Regional Administrator or his authorized representative and/or the authorized representative of the State water pollution control agency, in the case of non-Federal facilities, upon the presentation of his credentials:

- a. To enter upon the permittee's premises in which an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
- c. To inspect at reasonable times any monitoring equipment or monitoring method required by this permit;
- d. To sample at reasonable times any discharge of pollutants.

5. The permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of treatment or control installed or utilized by the permittee to achieve compliance with the terms and conditions of this permit. 1A 093

6. The issuance of this permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.

7. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

8. The specific effluent limitations and other pollution controls applicable to the discharge permitted herein are set forth in the following conditions. The following conditions also set forth self-monitoring and reporting requirements. Unless otherwise specified, the permittee shall submit duplicate original copies of all reports to the head of the State water pollution control agency and the Regional Administrator. Except for data determined to be confidential under Section 303 of the Act, all such reports shall be available for public inspection at the office of the Regional Administrator. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act.

9. General Limitations

JA:094

a. Except as specifically authorized in this permit, the permittee shall not discharge floating solids or visible foam, unless such discharge results from intake screen backwash.

b. Initial Limitations-Unless specified otherwise in Conditions 10 and 11, the following conditions apply on the effective date of this permit and last for the duration of the permit.

(1) The permittee shall discharge condenser cooling water effluents such that the following conditions are satisfied:

(a)

Discharge
Serial No.

Effluent
Limit

001

- (1) The discharge temperature shall not exceed 35.6°C (96.0°F).*
- (2) The discharge-intake temperature difference shall not exceed:
 - (a) 8.33°C (15.0°F) when the circulating system is operating at full flow;
 - (b) 13.9°C (25.0°F) when the circulating system is operating at reduced flow;
 - (c) 15.6°C (28.0°F) when the circulating system is operating at reduced flow and one or more of the circulating water pumps down for maintenance or pump outage;
 - (d) 15.6°C (28.0°F) when 10% of the normal condenser discharge is recirculated to the inlet(s) for deicing purposes;
 - (e) 18.9°C (34.0°F) when 20% of the normal condenser discharge is recirculated to the inlet(s) for deicing purposes.
- (3) The net rate of addition of heat to the receiving water shall not exceed 2.09×10^9 Kcal/hr (8.30×10^9 BTU/hr.)
- (4) The pH shall not be less than 6.0 nor greater than 9.0 at any time.

(b)

Free available chlorine at Discharge 001 shall not exceed 0.5 mg/l at any time. Chlorination schedules shall be limited to one hour per day and six hours per week. Not more than one unit shall be chlorinated at one time. Chlorination shall take place during daylight hours only.

* The discharge temperature limitation may be exceeded during periods when one or more condensing units are operating with only one circulating water pump (unit), due to pump breakdown or routine pump maintenance. In the event of pump breakdown, the permittee shall take corrective action as soon as possible. If possible, routine pump maintenance resulting in a discharge temperature greater than 35.6°C (96.0°F) and/or a discharge intake temperature difference greater than 15.0°F should be avoided during June-September. In no case shall the discharge temperature limitation be exceeded more than 10% of the time during June-September.

(c)

The water temperature at the surface of an estuary shall not be raised to more than 90°F at any point provided further, at least 50 percent of the cross sectional area and/or volume of the flow of the estuary including a minimum of one-third of the surface as measured from water edge to water edge at any stage of tide, shall not be raised to more than 4°F over the temperature that existed before the addition of heat of artificial origin or a maximum of 83°F, whichever is less. However, during July through September if the water temperature at the surface of an estuary before addition of heat of artificial origin is more than 83°F, the increase in temperature not to exceed 1.5°F, at any point in the estuarine passageway as delineated above, may be permitted.

(2) The area average approach velocity at a point 24 inches in front of the fine mesh fixed screens shall not exceed:

- (a) 0.55 feet per second within one week after the 24-hr. average ~~area~~ river water temperature is 4.4°C(40.0°F) or less,
 (b) 0.9 feet per second at any time.

Discharge Limitation in
 kg/day(lbs/day)-Gross Other Limitations

Serial No. or Type	Parameter	Daily		Daily	
		Average	Maximum	Average	Maximum
Sum of Non-Radiological Nuclear Plant Wastes and Radioactive Liquid Wastes	Boron	13.7(30)	27.3(60)		
Plant Laundry Wastes	Surfactants	1.4(3)	2.7(6)		
Sum of Boiler and Steam Generator Blowdown	Total Phosphorus (as P)	4.5(10)	9(20)		
Primary System Effluent	Total Chromium	0.045(0.1)	0.23(0.5)		

(4)

The discharge shall not contain concentrations of oil and grease that would produce a sheen in the receiving waters.

(5)(a) Discharge shall occur only through subsurface ports of the outfall structure for which a construction permit has heretofore been issued by NYSDEC.

JA.096

(b) An average discharge velocity of 10 ft/sec at the vena contracta of the discharge ports shall be employed. The relationships between discharge velocity, open port area, and canal head above river level shall be confirmed by actual measurement. Port openings shall be adjusted within twelve hours of any change in circulating flow rate so as to attain and maintain such ten ft/sec velocity and, after controls for such port openings have been motorized, port openings will be so adjusted within four hours.

c.(1) By July 1, 1975, the permittee shall submit to the Regional Administrator and State Certifying Agency a report describing proposed alternative program(s) to reduce the impact of impingement of aquatic organisms due to the operation of the intake structure of Unit 1. The program(s) shall consider alternative methods, which shall include but not be limited to (a) modification of the intake structure, and/or (b) modification of the location of the intake structure, and/or (c) reduction of intake velocity and/or flow, and/or (d) installation of a closed-cycle cooling system, and/or (e) common intake structure with Unit 2 or Unit 3. The report shall include the costs and potential benefits of the various alternatives and the installation time required for each, as well as proposed compliance schedules. It shall also include all impingement data not previously submitted.

Upon review of the permittee's report and any other relevant data, applicable requirements and compliance schedule(s) will be imposed pursuant to Section 316(b) of the Act, in accordance with the procedural requirements of Condition 2.

(2) If the permittee's operation of the intake screening system results in the killing of an unreasonable number of fish, the Regional Administrator and/or State Certifying Agency shall direct the permittee to take immediate corrective action to reduce the rate of fish kill. If the permittee fails to take such action, the Regional Administrator and/or State Certifying Agency is authorized to direct Con Edison to suspend the operation of the system causing the unreasonable kill; provided, however, no such suspension shall be directed if:

(a) Such suspension would require a power reduction at the facility and the permittee establishes to the reasonable satisfaction of the Regional Administrator and State Certifying Agency that:

(1) An emergency need for power exists on its system which cannot otherwise be met; or

(2) Such suspension would create an impact on the indigenous aquatic population of the Hudson River potentially more adverse than such fish kill; or

(3) Such suspension would cause a significant violation of U.S. Atomic Energy Commission Facility Operating License No. DPR-26; or

(b) Such suspension would prevent planned experiments approved by the Regional Administrator and/or the State Certifying Agency.

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10. Required Limitations

(a) During the period beginning July 1, 1977/ and lasting until the date of expiration of this permit, discharges shall comply with the values listed below for those parameters indicated:

Discharge Serial No. or Type	Parameter	Discharge Limitation in kg/day(lbs/day)- Gross			
		Daily Average	Daily Maximum	Average	Maximum
Sum of Evaporator Blowdown and Demineralizer Wastes	Total Suspended Solids	1.2(2.7)	4.0(8.9)		
Superheater or Air Preheater Cleanings Wastes*	Total Suspended Solids				4.6(10.2)
	Total Iron				0.045(0.1)
	Oil and Grease				0.9(2)
	Total Copper				0.045(0.1)

(b) Beginning by May 1, 1979 and lasting until the date of expiration of this permit, the permittee shall comply with the following conditions:

(1) There shall be no discharge of heat from the main condensers of Indian Point Unit 2 except heat may be discharged in blowdown from recirculated cooling water systems provided the temperature at which the blowdown is discharged does not exceed at any time the lowest temperature of recirculated cooling water prior to the addition of make-up water.

(2) The permittee shall discharge cooling system effluents such that the following conditions are satisfied:

Discharge Serial No. or Type	Effluent Limit
Unit 2 Cooling Tower Blowdown	(a) The blowdown temperature shall not exceed 37.2°C (99.0°F).
	(b) The net rate of addition of heat to the receiving water shall not exceed (1) 0.021×10^9 Kcal/hr (0.031×10^9 BTU/hr.) during June-Sept.; (2) 0.033×10^9 Kcal/hr (0.13×10^9 BTU/hr.) during Oct.-May.
Total Discharge (Units 1 and 2)	(a) The discharge temperature shall not exceed 37.2°C (99.0°F).
	(b) The net rate of addition of heat to the receiving water shall not exceed 0.54×10^9 Kcal/hr. (2.15×10^9 BTU/hr.).

* Limitations for Superheater and Air Preheater Cleaning Wastes are specified in kg/cleaning (lbs/cleaning).

11. (a) Schedule of Compliance for Condition (a). The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance** with the schedule date and requirement:

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(a) The permittee shall complete an engineering report and submit it to the State Agency in accordance with State requirements*** by ~~July 1, 1975~~. *Dec 1, 1975*

(b) The permittee shall complete ~~final~~ plans and specifications for the treatment facilities and submit it to the State Agency in accordance with State requirements*** by ~~December 1, 1975~~. *November 1, 1976*

(c) The permittee shall start construction of its facilities by ~~April 1, 1976~~. *Feb 1, 1977*

(d) The permittee shall complete construction of the facilities by ~~April 1, 1977~~. *Dec 1, 1977*

(e) The permittee shall attain the operational levels required to achieve the limits specified in Condition 10(a) by ~~July 1, 1976~~. *May 1, 1976*

*If the time period allotted for the completion of an interim requirement specified above is greater than 9 months, then the permittee shall submit a report detailing its progress toward completion of the interim requirement at the end of the first 9-month period and at the end of each succeeding 9-month period (including, of course, the report, specified above, required within 14 days following the specified completion date).

**Each notice of noncompliance shall include the following information:

- (1) A short description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next scheduled requirement on time.

***State Requirements: All reports, plans and/or specifications that propose new or modified waste treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are to be built.

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11. (b) Schedule of Compliance for Condition 10(b). The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance* with the schedule date and requirement:

(a) The permittee shall complete an engineering report and submit it to the Regional Administrator and State Agency in accordance with State requirements* by June 1, 1975.

(b) The permittee shall complete final plans and specifications for the treatment facilities and submit it to the Regional Administrator and State Agency in accordance with State requirements* by October 1, 1975.

(c) The permittee shall submit reports detailing its progress toward completion of the facilities required to comply with Condition 10(b) by July 1, 1976, April 1, 1977, January 1, 1978 and September 1, 1979.

(d) The permittee shall attain the operational levels required to achieve the limits specified in Condition 10(b) by May 1, 1979**.

*Each notice of noncompliance shall include the following information:

- (1) A short description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next schedule requirement on time.

All reports, plans and/or specifications that propose new or modified waste treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are to be built.

** This date may be extended upon approval of the Regional Administrator on a basis of a showing of good cause by the permittee. In no case will this date be extended beyond July 1, 1981.

12. Monitoring and Recording. The permittee shall monitor and record the quantitative values of each discharge according to the following schedules and other provisions: For each discharge and for each Sampling Schedule listed below, the flow (in gallons per day) shall be measured.* Where net values are listed in Conditions 9(b) and/or 10 the surface water intake is to be sampled with the same frequency and type of sample as specified below for each required parameter.

- (a) Sampling Schedule for the Cooling Water Discharge
(Discharge Serial No. 001) - The following sampling schedule shall commence on _____ and last _____ for the duration of the permit:

(1) Parameter	Minimum Freq. of Analysis	Sample Type
Discharge temperature	Continuous	
Intake temperature	Continuous	
pH	Twice weekly	Grab**
Free Available Chlorine	Continuous during chlorination periods***	
Hexavalent Chromium	Weekly	Composite
Boron	Daily during discharge	Composite
Phosphate	Weekly	Composite
Hydrazine	Weekly	Composite
Cyclohexylamine	Weekly	Composite
Total Suspended Solids	Weekly	Composite
Dissolved Oxygen	Monthly	Grab
(at intake and discharge)		

(2) Dissolved Oxygen Intensive Surveys-Dissolved oxygen in ppm shall be measured at the intake forebay and in the effluent canal prior to discharge thirty (30) consecutive days, each in spring, summer, fall, and winter of the first year of operation and reported within fifteen (15) days of the close of each survey. (Reports of all completed surveys shall be submitted to the Regional Administrator at the time the first Discharge Reporting Form is submitted).

(3) The maximum area and average approach velocity at a point 24 inches in front of the fine mesh fixed screens shall be calculated daily on basis of flow area and pumping capacity.

(b) Sampling Schedules for Discharges Other Than Condenser Cooling Water and Service Cooling Water.

(1) <u>Discharge Type</u>	<u>Parameter</u>	<u>Minimum Freq. of Analysis</u>	<u>Sample Type</u>
Non-Radiological Nuclear Plant Wastes and Radioactive Liquid Wastes	Boron	Twice Monthly	Composite
Plant Laundry Wastes	Surfactants	Monthly	Grab
Boiler and Steam Generator Blow- down	Total Phosphorus	Monthly	Composite
Primary System Effluent	Total Chromium	Twice Monthly	Composite
Superheater and Air Preheater Cleanings	Discharge Volume Discharge Duration Total Suspended Solids Total Iron Oil and Grease Total Copper	When discharge of superheater and/or air preheater cleaning occurs	Composite over duration of air preheater or su- perheater cleaning disch- arge for all parameters, ex- cept for Oil and Grease (3- every 4 hours for Oil and Grease). Samples shall be taken not less than once per hour for composite
Neutralization Facility Effluent	pH	Continuous Moni- toring	

* The flow of condenser cooling water discharges shall be monitored and recorded by hourly recording of the operating mode of the circulating water pumps. Any changes in the flow rate of each circulating water pump shall be recorded, including the date and time, and reported monthly together with the Discharge Reporting Form. The permittee shall indicate whether any circulating pumps were not in operation due to pump breakdown or required pump maintenance and the period(s) (dates and times) the discharge temperature limitation was exceeded, if at all. For all other discharges or internal waste streams (only those which are limited), the flow shall be measured and recorded at a frequency coinciding with the most frequently sampled parameter. Methods, equipment, installation and procedures shall conform to those prescribed in the Water Measurement Manual, U.S. Department of the Interior, Bureau of Reclamation, Washington, D.C., 1967.

** Grab samples only shall be taken for analysis of dissolved oxygen, oil and grease, pH and bacteriological analysis, except where specified otherwise. Care shall be exercised when collecting a composite sample such that the proper preservative is present in the sample container during sample collection. Depending on the analysis to be conducted, several different containers and preservation techniques may be required. Samples shall be analyzed as quickly as possible after collection and in no case shall the maximum holding time exceed that contained in the reference cited in Condition 12(g).

*** This requirement shall commence by June 1, 1975. Until that time, daily grab samples shall be taken at the beginning of each chlorination period and at 10 minute intervals during chlorination. The permittee shall report the dates and times of each chlorination period.

(c) Additional Monitoring Requirements(1) Isotherm Plots Requirements

Triaxial isothermal measurements of the thermal plume shall be conducted on a monthly basis (except when ice is on the Hudson River) until notified otherwise by the Regional Administrator. At critical times of the year and at the maximum surface temperature of the river, more frequent temperature measurements shall be made, particularly when operating at reduced flow during June-September. The isothermal measurements shall be conducted in accordance with the Atomic Energy Commission's Environmental Technical Specifications, Section 4.1.1a for Indian Point Units 1 and 2 (Appendix 3 to Facility Operating License DPR-26). Reports detailing the results of the monthly isothermal surveys shall be submitted to the Regional Administrator and State Certifying Agency within 60 days following the month during which the survey was conducted. Such reports shall be consistent in format and content to those Routine Monthly Thermal Monitoring Reports (prepared by Dames and Moore) previously submitted for May 1974 and June 1974.

(2) Impingement Monitoring

The numbers, weights, lengths and species of fish collected from the fixed and travelling screens shall be recorded on a daily basis. In the event greater than 5,000 fish per day are impinged, subsampling of the impinged fish population shall be performed to estimate number, size and weight. Such subsampling will consist of measuring and weighing at least 10% of the total impinged population of each species. Species selected for subsampling will be representative of the range of sizes collected in the trash basket. The monitoring program shall consist of washing down the fixed screens at least once per day and running all travelling screens approximately 15-30 minutes during each 8-hour shift. The estimated number and species of fish washed off the fixed screens which do not enter the forebay shall be estimated each day and recorded separately. Running the travelling screens at the time the fixed screens are raised and backwashed shall be carried out.

The permittee shall submit to the Regional Administrator and State Certifying Agency, by the 15th of each month, a monthly impingement monitoring report for the previous month. The report shall include a tabulation of the daily records of fish collection at the Indian Point facility and shall specify the daily number, species breakdown and total weights.

(3) The permittee will continue to conduct a continuous monitoring program in accordance with the "Environmental Technical Specification Requirements", which are incorporated by the U.S. Atomic Energy Commission in Facility Operating License No. DPR-26, (the "ESTR"), and will transmit to the Regional Administrator and State Certifying Agency concurrently with the reports to the U.S. Atomic Energy Commission such reports as are required by the ESTR. This monitoring shall be carried on under the surveillance of the Regional Administrator and State Certifying Agency and it is further understood that such monitoring is in no way intended to supersede the independent monitoring program of this permit or that required by the State Certifying Agency, but to supplement it. A copy of any other reports for Indian Point Units 1 and 2 pertaining to the environment which Con Edison submits to any other Federal, State or local agency, shall also be submitted to the Regional Administrator and the State Certifying Agency (if not already submitted).

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(d) Modifications to Sampling Schedules- The permittee may submit for approval an alternate schedule(s) to account for any realignment of discharges, for substitutions of parameters to be samples, for analytical and sampling methods to be utilized, for realignment of sampling locations so that concentrations to be measured are within reliable sensitivity ranges of the analytical techniques, and for the compositing by volume of individual discharge samples to make a single plant sample. With regard to substituting parameters such as TOC or COD for BOD, the permittee shall provide test data to support the correlation between the parameters.

If the permittee monitors any pollutant more frequently than is required by this permit, he shall include the results of such monitoring in the calculation and reporting of the values required in the Discharge Monitoring Report Form (EPA Form 3320-1 (10-72)) in Condition 12(h). Such increased frequency shall be indicated on the Discharge Monitoring Report Form.

(e) Quality Control - Adequate care shall be maintained in obtaining, recording, and reporting the required data on effluent quality and quantity, so that the precision and accuracy of the data will be equal to or better than that achieved by the prescribed standard analytical procedures. JA 100

The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at sufficiently frequent intervals to ensure accuracy of measurements.

Sampling shall be representative of the volume and quality of effluent discharged over the sampling and reporting period.

The permittee is responsible for assuring that the methodology used is reliable for their specific wastes in their laboratory. The permittee must be able to demonstrate to the Regional Administrator that they have a viable quality control program.

(f) Recording - The permittee shall maintain and record the results of all required analyses and measurements and shall record, for all samples, the date and time of sampling, the sample method used, the dates analyses were performed, who performed the sampling and analyses, and the results of such analyses.

All records shall be retained for a minimum of 3 years, such a period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator. The permittee also shall retain all original stripchart recordings from any continuous monitoring instrumentation and any calibration and maintenance records for a minimum of 3 years, such period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator.

The permittee shall provide the above records and shall demonstrate the adequacy of the flow measuring and sampling methods upon request of the Regional Administrator. The permittee shall identify the effluent sampling point used for each discharge pipe by providing a sketch or flow diagram, as appropriate, showing the locations.

(g) Sampling and Analysis

All sampling and analytical methods used to meet the monitoring requirements specified above shall conform to guidelines establishing test procedures for the analysis of pollutants, published pursuant to Section 304(g) of the Federal Water Pollution Control Act, as amended. If the Section 304(g) guidelines do not specify test procedures for any pollutants required to be monitored by this permit and until such guidelines are promulgated, sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless otherwise specified by the

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Regional Administrator, conform to the latest edition of the following references:

Standard Methods for the Examination of Water and Wastewaters, 13th Edition, 1971 American Public Health Association, New York, New York 10019.

A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis, 1972, American Society for Testing and Materials, Philadelphia, Pennsylvania 19103.

W.O.O. Methods for Chemical Analysis of Water and Wastes, April 1971, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, NERC, 1014 Broadway, Cincinnati, Ohio 45268.

(b) Reporting

The results of the above monitoring requirements shall be reported by the permittee in the units specified in Conditions 9(b) and 10. A report or a written statement shall be submitted even if no discharge occurred during the reporting period. A report shall also be submitted if there have been any modifications in the waste collection, treatment, and disposal facilities, changes in operations procedures, or other significant activities which alter the quality and quantity of the discharges or otherwise concern these Conditions. Permanent elimination of a discharge shall be promptly reported by the permittee in writing to the Regional Administrator.

The permittee shall include in this report any previously approved non-standard analytical methods used. Copies of the report shall be sent to both the Regional Administrator and the State Agency on the 15th of each month reporting the monitoring data from the previous month. A Discharge Monitoring Report form [EPA Form 3320-1 (10-72)] shall be used for reporting.

13. Sludge Disposal. Collected screenings, sludges, and other solids and precipitates separated from the permittee's discharges authorized by this permit and/or intake or supply water by the permittee shall be disposed of in such a manner as to prevent entry of such materials into navigable waters or their tributaries.* Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment may be returned to their water body habitat. The permittee shall report on all effluent screenings, sludges and other solids associated with the discharge herein described. The following data shall be reported quarterly:

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- a. The method by which they were removed and transported;
- b. Their final disposal locations.

14. Discharge Containing Parameter Not Previously Reported. The permittee shall not discharge any wastewater containing a substance or characterized by a parameter which was indicated as absent in its NPDES Permit Application. In the event of such a discharge, the permittee shall notify the Regional Administrator and the State Agency prior to the discharge.

15. Non-Compliance with Conditions. In the event the permittee is unable to comply with any of these conditions, due, among other reasons, to:

(1) Breakdown of waste treatment equipment, (biological and physical-chemical systems including, but not limited to, all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units);

(2) Accidents caused by human error or negligence; or

(3) Other causes, such as acts of nature.

*Live fish and non-separable solids from the washing of the intake can be discharged via Discharges 002, 003, 005 and 006.

the permittee shall notify the Regional Administrator and the State Agency immediately by telephone and in writing within five days. The written notification shall include the following pertinent information:

- (1) Cause of noncompliance;
- (2) A description of the noncomplying discharge including its impact upon the receiving waters;
- (3) Anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance;
- (4) Steps taken by the permittee to reduce and eliminate the noncomplying discharge; and
- (5) Steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.

Permittee shall take all reasonable steps to minimize any adverse impact to navigable waters resulting from noncompliance with any effluent limitation specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

Nothing in this permit shall be construed to relieve the permittee from appropriate civil or criminal penalties for non-compliance.

16. Bypass Provision. There shall be no bypass of the waste treatment facilities which would allow the entry of untreated or partially treated wastes to the receiving waters.

17. Authorized Signature for Reporting Requirements. All reports required to be submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, all reports must be signed by a general partner or a sole proprietor, respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

18. U.S. Army Corps of Engineers Requirements

The United States Army Corps of Engineers conducts maintenance dredging of navigable waters and their tributaries pursuant to certain Federal statutes. The permittee should be aware of its possible responsibilities under the maintenance dredging program. Under these laws, any person, firm or entity discharging suspended solids into a navigable waterway of the United States, or tributary thereof, which contributes to the necessity for maintenance dredging of that waterway may be required to participate in the maintenance dredging program.

19. Radioactive Substances. Limits and monitoring requirements for radioactive substances contained in wastewater discharges may be imposed in the future.

Regional Administrator: Regional Administrator
Region II
Environmental Protection Agency
26 Federal Plaza
New York, New York 10007
ATTN: Status of Compliance Branch.

State Certifying Agency: Mr. Russell Mt. Pleasant, P.E., Chief
Bureau of Monitoring and Surveillance
Division of Pure Waters
N.Y.S. Department of Environmental Conservation
50 Wolf Road
Albany, New York 12201

Daily - each operating day.

Weekly - every seventh day (the same day each week) and a normal operating day.

Monthly - one day each month (the same day each month) and a normal operating day. (i.e. the 2nd Tuesday of each month)

Daily Average - the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the production or commercial facility was operating.

Daily Maximum - the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

Net - the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount of a pollutant contained in the surface water body intake source, measured in the same units, over the same period of time.

1. The intake source must be the same water body that is being discharged to.

2. In cases where the surface water body intake source is protected for the removal of pollutants, the intake level of a pollutant to be used in calculating the net, is that level contained after the pretreatment steps.

Composite - a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of 24 individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of 4 - 8 hours duration, grab samples shall be taken at a minimum of 30 minute intervals. For intermittent discharges of less than 4 hours duration grab samples shall be taken at a minimum of 15 minute intervals.

Gross - the poundage contained in the discharge. (Gross applies when the intake source is a municipal or private water supply, ground water, or a surface water body other than the one being discharged to.)

Grab - An individual sample collected in less than 15 minutes.

③ Maximum (Superheater and Air Preheater Cleanings)- The total discharge by weight resulting from any superheater or air preheater cleaning event

Area Average Approach Velocity - water velocity determined by the volume flow rate divided by the average area available for intake flow.

Site River Water Temperature - Hudson River water temperature at the Indian Point site without the addition of thermal discharges from the Indian Point site.

Intake Temperature - the water temperature measured in the intake structure forebay in the inlet to the circulating system.

Net Rate of Addition of Heat - This value is determined by the product of the discharge (or cooling tower blowdown) flow, heat capacity and discharge (or blowdown)-intake temperature difference.

NYSDEC- New York State Department of Environmental Conservation.

Reduced Flow- 60% of full flow of the circulating water system for either one or both units.

This permit and the authorization to discharge shall be binding upon the permittee and any successors in interest of the permittee and shall expire at midnight on March 30, 1980. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information, forms, and fees as are required by the agency authorized to issue NPDES permits no later than October 1, 1979.

By authority of _____

Gerald M. Handler, P.E.
(Regional Administrator)

FEB 24 1975

(Date)


(Signature)Mayer Scolnick
Director
Enforcement and Regional
Counsel Division

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10007

NOTICE OF ISSUANCE OF FINAL DETERMINATION

No. NPDES 75-473

Date: JUL 6 1975

Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final National Pollutant Discharge Elimination System (NPDES) permit to Consolidated Edison Company of New York, Inc. - Indian Point Generating Station (Unit 3) to discharge pollutants into waters of the United States. Public Notice of the tentative determinations contained in the permit was given on May 2, 1975 under NPDES No. 75-377. These tentative determinations were based on Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category as published at 39 Fed. Reg. p. 36198 et seq. (October 8, 1974), the draft certification received from the State of New York Department of Environmental Conservation, and §316(b) of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, "the Act"), 33 U.S.C. §1341. The limitations contained in the Final Determination were arrived at by application of the aforementioned Effluent Guidelines and Standards, the final certification received from the State of New York Department of Environmental Conservation pursuant to §401 of the Act and §316(b) of the Act.

The company has received a permit for the Indian Point Generating Station (Unit 3) which will have an electrical net rated output of 955 MWe. (A design power level of 1,033 MWe is anticipated in the future). Unit 3, which is expected to commence commercial operation later during 1975, will have a pressurized water nuclear reactor which uses enriched uranium as fuel. It should be noted that a NPDES permit has previously been issued (on February 28, 1975) for the existing Indian Point Station Units 1 and 2 (Permit No. NY 000 4472), located at the same site as Unit 3. The nameplate capacities of Units 1 and 2 are 275 MWe and 1013 MWe, respectively.

All effluents from Unit 3 (except intake screen backwash) will be discharged together with effluents from Units 1 and 2 via a common submerged multiport diffuser (001). The contribution from Unit 3 will have a maximum flow of 870,000 gallons per minute (gpm) of which 840,000 gpm is condenser cooling water, 30,000 gpm is service cooling water, and the remainder is steam generator blowdown (6,000 gallons per day average) and flash evaporation blowdown (28,800 gallons per day average). Ion exchanger regeneration wastes, radio-

active liquid wastes and plant laundry wastes will be treated by the treatment facilities for Units 1 and 2. The total maximum flow of the common discharge for Units 1-3 will be 2,059,000 gpm, of which 1,950,000 gpm is condenser cooling water and 99,000 gpm is service water. Discharge 002 results from intake screen backwash and will have a maximum flow of 432,000 gallons per day. Coarse debris is removed from the river and disposed of in a local refuse dump. The SIC code for this industry is 4911.

All effluents are discharged into the Hudson River at points approximately 5 miles downstream from the Bear Mountain Bridge. The Hudson River at the points of discharge has a New York State water quality classification of Class SB, for which the best usage is defined as bathing and any other usages, except shellfishing for market purposes.

It should be noted that the permit requires installation of a closed-cycle cooling system for the condenser cooling water of Unit 3 by September 15, 1980.

The Final Determination will become a final NPDES permit, issued and effective on July 31, 1975 unless an Adjudicatory Hearing is granted pursuant to 40 C.F.R. §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974).

Interested persons may request that such an Adjudicatory Hearing be held. Any request for an Adjudicatory Hearing must meet the requirements of the regulations cited above and must be received by the Environmental Protection Agency at the above address no later than ten days from the date of this Notice.

The permittee has not submitted to EPA a timely request for the imposition of alternative effluent limitations relative to the thermal limitations imposed by the Effluent Guidelines and Standards for the Steam Electric Generating Point Source Category referenced above. Therefore, the permittee cannot receive a Section 316(a) waiver with respect to the Effluent Guidelines' closed-cycle cooling requirement.

A timely request has been submitted with respect to State thermal water quality standards requirements, which were included in the Draft Permit pursuant to the State 401 Certification. After careful consideration of the data submitted by the permittee with respect to Section 316(a) of the Act, the Regional Administrator has determined that the information which the permittee has submitted is insufficient to determine whether or not the alternative thermal effluent limitations requested with respect to such thermal water quality standards requirements will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made.

In addition to the Effluent Guidelines requirements, the Regional Administrator has determined that closed-cycle cooling is required in order to minimize adverse environmental impact pursuant to Section 316(b) of the Act.

A copy of the Final Determination and other available information may be obtained by mail from the Status of Compliance Branch, EPA Region II, at the above address, or by calling (212) 264-9881, or in person between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday. Other forms and relevant documents may be inspected at that office. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

UNIT 3
JA118

Application No.: NY0027065

Name of Permittee: Consolidated Edison

Company of New York, Inc., Indian Pt. Genera
Station (Unit 3)

Effective Date: July 31, 1975

Expiration Date: July 30, 1980

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
DISCHARGE PERMIT

In reference to the above application for a permit authorizing the discharge of pollutants in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, October 18, 1972 (33 U.S.C. §1251-1376) (hereinafter referred to as "the Act"), Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, New York 10003

(hereinafter referred to as "the permittee")

is authorized by the Regional Administrator, Region II, U. S. Environmental Protection Agency
to discharge from Indian Point Generating Station (Unit 3)
Buchanan, Westchester County, New York

to the Hudson River

in accordance with the following conditions.

1. All discharges authorized herein shall be consistent with the terms and conditions of this permit; facility expansions, production increases or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application, or if such new or increased discharge does not violate the effluent limitations specified in this permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.

2. After notice and opportunity for a public hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

3. Notwithstanding Condition 2 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, the Regional Administrator shall revise or modify this permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

4. The permittee shall allow the Regional Administrator or his authorized representative and/or the authorized representative of the State water pollution control agency, in the case of non-Federal facilities, upon the presentation of his credentials:

- a. To enter upon the permittee's premises in which an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;
- b. To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
- c. To inspect at reasonable times any monitoring equipment or monitoring method required by this permit;
- d. To sample at reasonable times any discharge of pollutants.

5. The permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of treatment or control installed or utilized by the permittee to achieve compliance with the terms and conditions of this permit.

6. The issuance of this permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.

7. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

8. The specific effluent limitations and other pollution controls applicable to the discharge permitted herein are set forth in the following conditions. The following conditions also set forth self-monitoring and reporting requirements. Unless otherwise specified, the permittee shall submit duplicate original copies of all reports to the head of the State water pollution control agency and the Regional Administrator. Except for data determined to be confidential under Section 308 of the Act, all such reports shall be available for public inspection at the office of the Regional Administrator. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act.

9. General Limitations

NY 0027065

JA 121

a. Except as specifically authorized in this permit, the permittee shall not discharge floating solids or visible foam.

b. Initial Limitations-Unless specified otherwise in Conditions 10 and 11, the following conditions apply upon the effective date of this permit and last for the duration of the permit:

(1) The permittee shall discharge cooling water effluents such that the following conditions are satisfied:

Discharge
Serial No.

Effluent
Limit*

Unit 3 Contribution to
Discharge 001

- (a) The discharge temperature shall not exceed 37.2°C (99.0°F)**
- (b) The discharge-intake temperature diff shall not exceed 2.4°C (17.0°F).***
- (c) The net rate of addition of heat to the receiving water shall not exceed 1.833 Kcal/hr (7.25×10^9 BTU/hr).

001

- (a) The pH shall not be less than 6.0 nor greater than 9.0 at any time.

* With the exception of the pH limit, which applies to the total effluent from Units 1-3, all limitations apply to the effluent from Unit 3 only.

**This limitation may be exceeded during periods when one or more condensing units are operating with only one circulating water pump (per unit), due to pump breakdown or routine pump maintenance.

***This limitation applies during summer months at full flow. The following limitations apply at other times:

Summer operation:

- a) 31°F during pump outages
- b) 19°F when heater or preheater drains empty directly into condenser or during periods of high air leakage into condenser.

Winter operation:

- a) 28°F at 50% full flow per pump.
- b) 31°F during pump outages or during use of one deicing pump.
- c) 38°F during use of both deicing pumps.

In the event of pump breakdown, the permittee shall take corrective action as soon as possible. Where possible, routine pump maintenance resulting in violations of Conditions 9b(1)(a) and 9b(1)(b) being exceeded should be avoided during June-September. In no case shall the limitations specified in Conditions 9b(1)(a) and 9b(1)(b) be exceeded more than 10% of the time during the operating year.

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(2) Free available chlorine at Discharge 001 shall not exceed 0.5 mg/l. Chlorination of Unit 3 shall be limited to one hour per day and two hours per week and not more than one unit at the site shall be chlorinated at one time. Chlorination shall take place during daylight hours only.

(3) The area average approach velocity at a point 24 inches in front of the traveling screens shall not exceed:

(a) 0.55 feet per second within one week after the 24-hour average river water temperature is 4.4°C (40.0°F) or less;

(b) 0.9 feet per second at any time.

(4) The discharge shall not contain concentrations of oil and grease that would produce a sheen in the receiving waters.

(5) Discharge Serial Number or Type	Parameter	Discharge Limitation in kg/day (lbs/day)	
		Daily Avg.	Daily Max
Flash Evaporation Blowdown	Total Suspended Solids	63.6(140)	
Steam Generator Blowdown	Total Phosphorus (as P)	2.7 (6)	8.2 (18)
001 (Total Discharge for Units 1-3)	Hexavalent Chromium		0.05 mg/l
	Trivalent Chromium		0.05 mg/l
	Boron		0.1 mg/l
	Total Chromium		45.4 (100)

(6) Discharge shall occur only through the subsurface ports of the outfall structure for which a construction permit has heretofore been issued by NYSDEC. After the date of issuance of the operating license^{max}, under all conditions, modes, sequences of operation of Units 1, 2 and 3 above a combined power level from any and all units of 600 MW gross electric output or whenever the discharge canal temperature exceeds 90°F, the permittee shall maintain an average discharge velocity of not less than ten ft/sec. at the vena contracta of the discharge ports. The relationships between discharge velocity, open port area, and canal head above river level shall be confirmed by actual measurement and reported to NYSDEC. The manual adjustments in the ports shall be made within 12 hours after any change in the flow rate of the circulating water pumps has occurred. After June 1, 1975, the adjustments shall be made within four hours.

* These are instantaneous maximum values.

** This limitation is specified in kg/year (lbs/year).

*** This refers to the Commission operating license for Indian Pt. Unit 3.

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c. Within six (6) months of the effective date of this permit, the permittee shall prepare and submit to the Regional Administrator and NYSDEC for approval an implementation plan for minimizing to the extent practicable environmental impacts on aquatic biota from the operation of Indian Point Units 1, 2 and 3 with once-through cooling systems detailing:

(1) Operating procedures

This section of the plan shall contain plant procedures relevant to the intake of water and the discharge of effluents.

(2) Contingency Procedures

This section of the plan shall contain the procedures which the plant will follow in order to minimize environmental effects in case of large fish kills and other detrimental effects of aquatic biota. Among other requirements:

(a) The Contingency Procedures shall contain requirements that if the number of fish of all sizes and species collected from the fixed and traveling screens of all forelays at the Indian Point Station exceeds 5,000 per day for three consecutive days or the number of fish of all sizes killed on a single day exceeds 15,000, or such other numbers as may be approved by the Regional Administrator and NYSDEC*, the permittee shall immediately notify the Regional Administrator and NYSDEC and take immediate corrective action to reduce the number killed to below these levels. If the permittee fails to reduce fish kills to below these levels, the permittee shall immediately notify the Regional Administrator and NYSDEC of its inability to attain such reduction, and the Regional Administrator and/or NYSDEC may direct the permittee to suspend the operation of the system causing the excess fish kills, provided, however, no such suspension shall be directed if:

(1) Such suspension would require a power reduction at the facility and the permittee establishes to the reasonable satisfaction of the Regional Administrator and NYSDEC that:

(i) An emergency need for power exists on its system which cannot otherwise be met by consumption reductions or otherwise; or

(ii) Such suspension would create an impact on the indigenous aquatic population of the Hudson River potentially more adverse than such fish kill; or

(iii) Such suspension would cause a significant violation of the appropriate Commission operating license.

(2) The Regional Administrator and/or NYSDEC believes such suspension would invalidate planned experiments approved by the Regional Administrator and/or NYSDEC and designed to minimize fish kills.

* Other numbers, if desired by the permittee, must be applied for.

(b) The Contingency Procedures in the plan shall also contain requirements that if the number of fish of any specified size, species or both collected from the fixed and travelling screens of all forebays at the Indian Point site or otherwise determined to be killed or unduly stressed exceeds such numbers for such lengths of time as may be determined under the biological monitoring program undertaken pursuant to Condition 12(c)(3) or otherwise approved by the Regional Administrator and/or NYSDEC or, if any other specified effect on aquatic biota exceeds such parameters as may be determined under such study program or otherwise approved by the Regional Administrator and/or NYSDEC, the permittee shall notify the Regional Administrator and NYSDEC and take immediate corrective action to prevent such effect from continuing to occur. If the permittee fails to prevent such effect from continuing to occur, the permittee shall immediately notify the Regional Administrator and NYSDEC and the Regional Administrator and/or NYSDEC may direct the permittee to suspend the operation of the system causing the effect to continue to occur; provided, however, no such suspension shall be directed in the circumstances set forth in Condition 9c(2)(a) above.

(c) The Contingency Procedures shall also contain conditions under which the permittee will alter the operation of Units 1, 2 and 3 and, if necessary, the dispatch of its system consistent with its obligations for furnishing reliable electric service and taking into consideration the national policy for conservation of fuel oil.

(d) The Contingency Procedures shall provide for prompt notification to the Regional Administrator and NYSDEC of shutdowns of all units during the months of December through March which result in reduction of the plants thermal effluent.

(3) MODIFICATION TO THE PRESENT DESIGN OF THE ONCE-THROUGH COOLING SYSTEM INCLUDING THE INTAKE STRUCTURES

This section of the plan will explain modifications to intake and discharge structures and other cooling system modifications which the permittee believes can be made as possible interim solutions to potential biological problems at Indian Point prior to completion of the closed-cycle cooling systems.

The plans pursuant to 9c(1), (2) and (3) above shall be designed to reduce to the extent practicable fish impingement,* entrainment mortality, and detrimental effects on aquatic biota in the Hudson River from the Indian Point plants during the period during which Indian Point No. 3 utilizes a once-through cooling system. Upon approval by the Regional Administrator and NYSDEC, the permittee shall implement this program in accordance with an approved schedule.

* These plans do not include consideration of fish impingement at Indian Point Unit 1 for which separate plans are required in Condition 9c(1) of the NPDES permit for Indian Point Units 1 and 2 (No. NY0004472).

10. Required Effluent Discharge

(a) During the period beginning July 1, 1977 and lasting until the date of expiration of the permit, discharges shall comply with the following conditions:

(1)

<u>Discharge Serial Number or Type</u>	<u>Parameter</u>	<u>Discharge Limitation in kg/day (Lbs/day)</u>	
		<u>Daily Avg.</u>	<u>Daily Max.</u>
Flash Evaporator Blowdown	Total Suspended Solids	9.2(20.1)	47.8(105)

(2) The following New York State Standards as applicable to the receiving water shall be complied with.

(a) Oil and floating substances - No residue attributable to sewage, industrial wastes or other wastes nor visible oil film nor globules of grease.

(b) Toxic wastes and deleterious substances - None in amounts that will interfere with use for primary contact recreation or that will be injurious to edible fish or shellfish or the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.

(c) Suspended, colloidal or settleable solids - None from sewage, industrial wastes or other wastes which will cause deposition or be deleterious for any best usage determined for the specific waters which are assigned to each class.

(b) During the period beginning September 15, 1980 and lasting until notified otherwise, discharges shall comply with the conditions specified below for those parameters indicated:

(1)(a) There shall be no discharge of heat from the main condenser(s) of Unit 3, except heat may be discharged in blowdown from a recirculated cooling water system provided the temperature at which the blowdown is discharged does not exceed the lowest temperature of recirculating cooling water prior to the addition of make-up water.

(b) The permittee shall discharge cooling system effluents such that the following conditions are satisfied:

Discharge Serial
Number or Type

Effluent Limit

Unit 3 Cooling Tower
 Blowdown

- (1) The blowdown temperature shall not exceed 37.2°C (99.0°F).
- (2) The net rate of addition of heat to the receiving water shall not exceed:
 (a) 0.023×10^9 Kcal/hr (0.089×10^9 BTU/hr) during June-September.
 (b) 0.036×10^9 Kcal/hr (0.143×10^9 BTU/hr.) during October-May.

Total Discharge
 (Unit 3 only)

- (1) The net rate of addition of heat to the receiving water shall not exceed:
 0.063×10^9 Kcal/hr (0.25×10^9 BTU/hr).

(2) The permittee shall discharge thermal effluents such that the following conditions are satisfied: *

(a) Thermal Discharges -

(1) All thermal discharges to the waters of the State shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.

(2) For the protection of the aquatic biota from severe temperature changes, routine shutdown of an entire thermal discharge at any site shall not be scheduled during the period from December through March.

(3) All mixing zones shall have definable numerical limits specified by the NYSDEC (e.g., linear distances from the point of discharge, surface area involvement, or volume of receiving water entrained in the thermal plume).

(4) Conditions in the mixing zone shall not be lethal in contravention of water quality standards to aquatic biota which may enter the zone.

(5) The location of mixing zones for thermal discharges shall not interfere with spawning areas, nursery areas and fish migration routes.

(b) Estuaries or portions of estuaries - As used herein, estuary shall refer to the Hudson River in the vicinity of Indian Point.

(1) The water temperature at the surface of an estuary shall not be raised to more than 90°F at any point.

(2) At least 50 percent of the cross sectional area and/or volume of the flow of the estuary including a minimum of one-third of the surface as measured from water edge to water edge at any stage of tide, shall not be raised to more than 4 Fahrenheit degrees over the temperature that existed before the addition of heat of artificial origin or a maximum of 83°F whichever is less.

(3) From July through September, if the water temperature at the surface of an estuary before the addition of heat of artificial origin is more than 83°F an increase in temperature not to exceed 1.5 Fahrenheit degrees at any point of the estuarine passageway as delineated above, may be permitted.

* The New York State Standards (NYCRR Parts 700, 701, 702, 704) as applicable to the receiving waters shall be complied with, including those specified in Condition 10(b)(2).

11.(a) Schedule of Compliance for Condition 10(a). The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance** with the schedule date and requirement:

(a) The permittee shall complete an engineering report and submit it to the State Agency in accordance with State requirements*** by November 1, 1975.

(b) The permittee shall complete final plans and specifications for the treatment facilities and submit it to the State Agency in accordance with State requirements*** by March 1, 1976.

(c) The permittee shall start construction of its facilities by July 1, 1976.

(d) The permittee shall complete construction of the facilities by April 1, 1977.

(e) The permittee shall attain the operational levels required to achieve the limits specified in Condition 10(a) by July 1, 1977.

*If the time period allotted for the completion of an interim requirement specified above is greater than 9 months, then the permittee shall submit a report detailing its progress toward completion of the interim requirement at the end of the first 9-month period and at the end of each succeeding 9-month period (including, of course, the report, specified above, required within 14 days following the specified completion date).

**Each notice of noncompliance shall include the following information:

- (1) A short description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next scheduled requirement on time.

***State Requirements: All reports, plans and/or specifications that propose new or modified waste treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are located.

11.b. Schedule of Compliance for Condition 10(b). The permittee shall with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance* with the schedule and requirement:

(a) The permittee shall complete an engineering report and submit it to the Regional Administrator and State Agency in accordance with State requirements* by April 1, 1976.

(b) The permittee shall complete final plans and specifications for treatment facilities and submit it to the Regional Administrator and State Agency in accordance with State requirements* by September 1, 1977.

(c) The permittee shall submit reports detailing its progress toward completion of the facilities required to comply with Condition 10(b) by May 1, 1977, January 1, 1978, August 1, 1978, and April 1, 1980.

(d) The permittee shall attain the operational levels required to achieve the standards specified in Condition 10(b) by September 15, 1980**.

*Each notice of noncompliance shall include the following information:

- (1) A description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next schedule requirement on time.

All reports, plans, and/or specifications that propose new or modified treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are to be built.

**This date may be extended upon approval of the Regional Administrator on a basis of good cause by the permittee. In no case will this date be extended beyond July 1, 1981.

12. Monitoring and Recording. The permittee shall monitor and record the quantitative values of each discharge according to the following schedules and other provisions: For each discharge and for each Sampling Schedule listed below, the flow (in gallons per day) shall be measured.* Where not values are listed in Conditions 9(b) and/or 10 the surface water intake is to be sampled with the same frequency and type of sample as specified below for each required parameter.

(a) Sampling Schedule for the Cooling Water Discharge
(Discharge Serial No. 001) - The following sampling schedule shall commence on August 1, 1975 and last for the duration of the permit:

(1) Parameter	Minimum Freq. of Analysis	Sample Type
Discharge temperature***	Continuous*****	
Intake temperature	Continuous	
pH	Daily	Grab**
Free Available Chlorine	Continuous during chlorination periods*****	
Hexavalent Chromium ****	Weekly	Composite
Boron	Daily during discharge	Composite
Phosphate	Weekly	Composite
Hydrazine	Weekly	Composite
Cyclohexylamine	Weekly	Composite
Total Suspended Solids	Weekly	Composite
Dissolved Oxygen	Monthly	Grab
(at intake and discharge)		

(2) Dissolved Oxygen - In addition to the requirements above, dissolved oxygen in ppm shall be measured at the intake forebay and in the effluent canal prior to discharge for five (5) days during the week of each routine thermal survey and reported within ninety (90) days of the close of each survey.

(3) The maximum area average approach velocity at a point 24 inches front of the travelling screens shall be calculated daily on the basis of flow area and pumping capacity.

*The flow of condenser cooling water discharges shall be monitored and recorded by hourly recording of the operating mode of the circulating water pumps. Any changes in the flow rate of each circulating water pump shall be recorded, including the date and time, and reported monthly together with the Discharge Reporting Form. The permittee shall indicate whether any circulating pumps were not in operation due to pump breakdown or required pump maintenance and the period(s) (dates and times) the discharge temperature limitation was exceeded, if at all. For all other discharges or internal waste streams (only those which are limited), the flow shall be measured and recorded at a frequency coinciding with the most frequently sampled parameter. Methods, equipment, installation and procedures shall conform to those prescribed in the Water Measurement Manual, US Department of the Interior, Bureau of Reclamation, Washington, D.C., 1967.

**Grab samples only shall be taken for analysis of dissolved oxygen, oil and grease, pH and bacteriological analysis, except where specified otherwise. Care shall be exercised when collecting a composite sample such that the proper preservative is present in the sample container during sample collection. Depending on the analysis to be conducted, several different containers and preservation techniques may be required. Samples shall be analyzed as quickly as possible after collection and in no case shall the maximum holding time exceed that contained in the reference cited in Condition 12(g).

*** Discharge temperature shall be determined for the cooling water from Unit 3 prior to combining with cooling water from Units 1 and 2, as well as at the combined effluent at Discharge 001.

**** If tests for Hexavalent chromium show detectable concentrations, a test for Trivalent Chromium shall also be conducted.

***** Continuous monitoring of Free Available Chlorine and Discharge Temperature (for the cooling water from Unit 3 only) shall commence by December 1, 1975. Until that time, daily grab samples shall be taken.

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(b) Sampling Schedules for Discharges Other Than Condenser Cooling Water and Service Cooling Water

Sampling Schedules I and II - Schedule I shall commence August 1, 1975 and last until December 1, 1975. Schedule II shall commence upon completion of Schedule I and continue until start-up of the treatment facilities required to comply with the effluent limitations of Condition 10(a)(1).

Discharge Serial Number or Type	Parameter	Minimum Freq. of Analysis		Sample Type
		Sched. I	Sched. II	
Flash Evaporator Blowdown	Total Suspended Solids	Twice Weekly	Monthly	Composite
Steam Generator Blowdown	Total Phosphorus (as P)	Monthly	Monthly	Composite
Neutralization Facility Effluent	pH	Continuous Monitoring		

Sampling Schedules III and IV - Sampling Schedule III shall commence upon start-up of the treatment facilities required to comply with Condition 10(a)(1) and last for 4 months. Schedule IV shall commence upon completion of Schedule III and continue for the duration of the permit.

Discharge Serial No. or Type	Parameter	Minimum Freq. of Analysis		Sample Type
		Sched. III	Sched. IV	
Flash Evaporator Blowdown	Total Suspended Solids	Twice Weekly	Twice Monthly	Composite
Steam Generator Blowdown	Total Phosphorus (as P)	Monthly	Monthly	Composite
Neutralization Facility Effluent	pH	Continuous Monitoring		

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(c) Additional Monitoring Requirements

(1) Isotherm Plots Requirements

(a)
Commencing upon the effective date of this permit and lasting until November 1977 or until notified by the Regional Administrator, whichever is later, triaxial isothermal measurements of the thermal plume shall be conducted on a monthly basis (except when ice is on the Hudson River) critical times of the year and at the maximum surface temperature of the river, more frequent temperature measurements shall be made, particularly when operating at reduced flow during June-September. The isothermal measurement shall be conducted in accordance with the Atomic Energy Commission's ETSR, Section 4.1. 1a for Indian Point Units 1 and 2 (Appendix B to Facility Operating License DPR-26). Reports detailing the results of the monthly isothermal surveys shall be submitted to the Regional Administrator and NYSDEC within 60 days following the month during which the survey was conducted. Such reports shall be consistent in format and content to those Routine Monthly Thermal Monitoring Reports (prepared by Dames and Moore) previously submitted for May 1974 and June 1974.

(b)
Within two (2) months of the effective date of this permit, the permittee shall file for approval with the Regional Administrator and NYSDEC a report for intensive seasonal triaxial isothermal measurements which shall be conducted during April, August and October in the waters receiving the discharge. The program shall provide for temperature measurements in increments of 1°F down to a level of 1°F temperature in excess of the temperature which existed prior to the addition of heat of artificial origin. The data and following analyses for all previous surveys shall be presented at the time of the first required report. Such surveys shall not be required during the year 1975.

Beginning February 1, 1977, for the 1976 surveys, and each February 1st thereafter, the permittee shall file with the Regional Administrator and NYSDEC a complete report on the previous year's intensive isothermal surveys. Such report shall include:

(a) A summary and assessment of the data presented for the individual surveys including a complete evaluation of the observed data in respect to the predictive mathematical and hydraulic models, and the assumptions used for their construction, as have been previously filed with the NYSDEC.

(b) Meteorological conditions, hydrological conditions, heat transfer coefficients, dispersion coefficients, salinity, tidal data and any other appropriate data deemed necessary by the NYSDEC to supplement and assist interpretation of the thermal plume mapping program.

(c) Data correlated and integrated to the predictive models previously presented to the NYSDEC with full justification made for adjustments in previous assumptions and predictions.

(d) A revision of expected temperature distributions as appropriate and justified from the data gathered.

(e) Background ambient temperature which would persist but for the addition of heat of artificial origin from any and all discharges which would affect the survey area, incremental effects from the operation of the Indian Point plants, and incremental effects of thermal discharges of others that may have influence in the area of the Indian Point discharge.

As there is only one combined discharge from the Indian Point site, for Units Nos. 1, 2 and 3, the triaxial isothermal measurement programs relate to all three units. The intensive program will be suspended if, and when (a) the permittee shall conclusively prove, to the satisfaction of the Regional Administrator and NYSDEC that it will comply with all provisions of water quality standards and criteria applicable at the site under any and all conditions of operation of Indian Point Units 1, 2 and 3 or any combination of units, or (b) the permittee shall initiate construction of a closed-cycle cooling system (provided, however, such program shall be reinstituted if such system is not completed and operated), whichever circumstance, (a) or (b) should first occur.

(2) STUDIES AND BIOLOGICAL DATA

(a) The permittee shall study the relationship between the salt water front passing the intakes at Indian Point and the number and kinds of fish impinged. A report presenting this information and data shall be submitted to the Regional Administrator and NYSDEC by September 1, 1975, and if the Regional Administrator and/or NYSDEC deems it necessary the permittee shall implement an approved program* to reduce fish impingement occasioned by salt water passage.

* This program will not include consideration of fish impingement at Indian Point Unit 1 for which separate plans are required in Condition 9c(1) of the NPDES permit for Indian Point Units 1 and 2 (No. NY0004472).

(b) IMPINGEMENT and ENTRAINMENT DATA and REPORTS.

(1) Within three (3) months of the effective date of this permit, the permittee shall file for approval with the Regional Administrator and NYSDEC a report containing a tabulation of all fish impingement data collected to date at Indian Point.

(2) Within five (5) months of the effective date of this permit, the permittee shall file for approval with the Regional Administrator and NYSDEC a report containing a tabulation of all entrainment data collected to date at Indian Point.

(3) The permittee shall collect all fish from each traveling screen washing at the Indian Point Station (Unit 1-3) on a daily basis. Total numbers and weights of white perch, striped bass, Atlantic tomcod, Atlantic sturgeon and shortnose sturgeon shall be recorded for each unit daily. Subsamples shall be taken of all other species to establish a numbers-weight relationship in a manner prescribed in the Environmental Technical Specifications Requirements for Indian Point. An estimate of total numbers shall be derived by recording total weight by species and converting to total numbers using the numbers-weight relationship. Fish shall be collected from each screen individually and an estimate made of the percentage (on a weight basis) of the total collected by screen.

For those species selected for sub-sampling, a representative range of sizes shall be sampled. The fixed screens (traveling screens for Unit 3) shall be washed at least once per day. For Units 1 and 2 the traveling screens shall be run at the time the fixed screens are raised and backwashed. The estimated number and species of fish washed off the fixed screens which do not enter the forebay shall be estimated.

Con Edison may propose an alternate impingement monitoring program prior to completion of the studies now underway. Upon completion of the studies said alternate program shall be implemented in lieu of the requirements set forth above, if approved by the Regional Administrator and NYSDEC.

The permittee shall submit to the Regional Administrator and NYSDEC, by the 15th of each month, a monthly impingement monitoring report for the previous month. The report shall include a tabulation of the daily records of fish collection at the Indian Point facility and shall specify the daily number, species breakdown and total weights.

In addition, once a week (or sooner as required by the Contingency Procedure (Condition 9c(2))), impingement records shall be reported to the NYSDEC New Paltz office by telephone.

Previously submitted reports need not be duplicated, but data location must be completely identified. Reported data shall specify cooling water flow, dates, times, available operating conditions, species, numbers and other available biological information.

(3) Within four (4) months of the effective date of this permit, the permittee shall file for approval with NYSDEC the detailed biological study program it is conducting to determine effects of once-through cooling system operation on aquatic organisms. The NYSDEC and the permittee shall from time to time consult on any necessary changes to the program. Segments of such biological study program shall be implemented as approved by the NYSDEC. A summary progress report shall be submitted to NYSDEC six (6) months following implementation of the first segment and every six (6) months thereafter. An annual report shall be submitted by July 31 of each year covering the preceding calendar year's operation. Additional reporting requirements may be imposed for certain segments of the program as

(4) The permittee shall continue to conduct a continuous monitoring program in accordance with the "Environmental Technical Specification Requirements", incorporated by the Commission in the Facility Operating Licenses for all Units at Indian Point and shall transmit to the Regional Administrator, State Certifying Agency concurrently with the reports to the U.S. Atomic Energy Commission such reports as are required by the ETSR. This monitoring shall be carried on under the surveillance of the Regional Administrator and NYSDEC and it is further understood that such monitoring is in no way intended to supersede the independent monitoring program of this permit or that required by NYSDEC but to supplement it. A copy of any other reports for Indian Point Unit 3 pertaining to the environment which Con Edison submits to any other Federal, State or local agency, shall also be submitted to the Regional Administrator and NYSDEC (if not already submitted).

(d) Modifications to Sampling Schedules- The permittee may submit for approval an alternate schedule(s) to account for any realignment of discharges, for substitutions of parameters to be samples, for analytical and sampling methods to be utilized, for realignment of sampling locations so that concentrations to be measured are within reliable sensitivity ranges of the analytical techniques, and for the compositing by volume of individual discharge samples to make a single plant sample. With regard to substituting parameters such as TOC or COD for BOD, the permittee shall provide test data to support the correlation between the parameters.

If the permittee monitors any pollutant more frequently than is required by this permit, he shall include the results of such monitoring in the calculation and reporting of the values required in the Discharge Monitoring Report Form (EPA Form 3320-1 (10-72)) in Condition 12(h). Such increased frequency shall be indicated on the Discharge Monitoring Report Form.

(e) Quality Control - Adequate care shall be maintained in obtaining, recording, and reporting the required data on effluent quality and quantity, so that the precision and accuracy of the data will be equal to or better than that achieved by the prescribed standard analytical procedures.

The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at sufficiently frequent intervals to ensure accuracy of measurements.

Sampling shall be representative of the volume and quality of effluent discharged over the sampling and reporting period.

The permittee is responsible for assuring that the methodology used is reliable for their specific wastes in their laboratory. The permittee must be able to demonstrate to the Regional Administrator that they have a viable quality control program.

(f) Recording - The permittee shall maintain and record the results of all required analyses and measurements and shall record, for all samples, the date and time of sampling, the sample method used, the dates analyses were performed, who performed the sampling and analyses, and the results of such analyses.

All records shall be retained for a minimum of 3 years, such a period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator. The permittee also shall retain all original stripchart recordings from any continuous monitoring instrumentation and any calibration and maintenance records for a minimum of 3 years, such period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator.

The permittee shall provide the above records and shall demonstrate the adequacy of the flow measuring and sampling methods upon request of the Regional Administrator. The permittee shall identify the effluent sampling point used for each discharge pipe by providing a sketch or flow diagram, as appropriate, showing the locations.

(g) Sampling and Analysis

All sampling and analytical methods used to meet the monitoring requirements specified above shall conform to guidelines establishing test procedures for the analysis of pollutants, published pursuant to Section 304(g) of the Federal Water Pollution Control Act, as amended. If the Section 304(g) guidelines do not specify test procedures for any pollutants required to be monitored by this permit and until such guidelines are promulgated, sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless otherwise specified by the

Regional Administrator, conform to the latest edition of the following references:

Standard Methods for the Examination of Water and Wastewaters, 13th Edition, 1971 American Public Health Association, New York, New York 10019.

A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis, 1972, American Society for Testing and Materials, Philadelphia, Pennsylvania 19103.

W.Q.O. Methods for Chemical Analysis of Water and Wastes, April 1971, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, NERC, 1014 Broadway, Cincinnati, Ohio 45268.

(h) Reporting

The results of the above monitoring requirements shall be reported by the permittee in the units specified in Conditions 9(p) and 10. A report or a written statement shall be submitted even if no discharge occurred during the reporting period. A report shall also be submitted if there have been any modifications in the waste collection, treatment, and disposal facilities, changes in operations procedures, or other significant activities which alter the quality and quantity of the discharges or otherwise concern these Conditions. Permanent elimination of a discharge shall be promptly reported by the permittee in writing to the Regional Administrator.

The permittee shall include in this report any previously approved non-standard analytical methods used. Copies of the report shall be sent to both the Regional Administrator and the State Agency on the 15th of each month reporting the monitoring data from the previous month. A Discharge Monitoring Report form [EPA Form 3320-1 (10-72)] shall be used for reporting.

13. Sludge Disposal. Collected screenings, sludges, and other solids and precipitates separated from the permittee's discharges authorized by this permit and/or intake or supply water by the permittee shall be disposed of in such a manner as to prevent entry of such materials into navigable waters or their tributaries.* Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment may be returned to their water body habitat. The permittee shall report on all effluent screenings, sludges and other solids associated with the discharge herein described. The following data shall be reported quarterly:

- a. The method by which they were removed and transported;
- b. Their final disposal locations.

14. Discharge Containing Parameter Not Previously Reported.**
The permittee shall not discharge any wastewater containing a substance or characterized by a parameter which was indicated as absent in its NPDES Permit Application. In the event of such a discharge, the permittee shall notify the Regional Administrator and the State Agency prior to the discharge.

15. Non-Compliance with Conditions. In the event the permittee is unable to comply with any of these conditions, due, among other reasons, to:

(1) Breakdown of waste treatment equipment, (biological and physical-chemical systems including, but not limited to, all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units);

(2) Accidents caused by human error or negligence; or

(3) Other causes, such as acts of nature,

*Live fish and non-separable solids from the washing of the intake screens may be discharged via Discharge 002.

** This condition applies unless such substance or parameter is present in the intake water and does not exceed the value in the intake water.

the permittee shall notify the Regional Administrator and the State Agency immediately by telephone and in writing within five days. The written notification shall include the following pertinent information:

- (1) Cause of noncompliance;
- (2) A description of the noncomplying discharge including its impact upon the receiving waters;
- (3) Anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance;
- (4) Steps taken by the permittee to reduce and eliminate the noncomplying discharge; and
- (5) Steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.

Permittee shall take all reasonable steps to minimize any adverse impact to navigable waters resulting from noncompliance with any effluent limitation specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

Nothing in this permit shall be construed to relieve the permittee from appropriate civil or criminal penalties for non-compliance.

16. Bypass Provision. There shall be no bypass of the waste treatment facilities which would allow the entry of untreated or partially treated wastes to the receiving waters.

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17. Authorized Signature for Reporting Requirements. All reports required to be submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, all reports must be signed by a general partner or a sole proprietor, respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

18. U.S. Army Corps of Engineers Requirements

The United States Army Corps of Engineers conducts maintenance dredging of navigable waters and their tributaries pursuant to certain Federal statutes. The permittee should be aware of its possible responsibilities under the maintenance dredging program. Under these laws, any person, firm or entity discharging suspended solids into a navigable waterway of the United States, or tributary thereof, which contribute to the necessity for maintenance dredging of that waterway may be required to participate in the maintenance program.

19. Radioactive Substances. Limits and monitoring requirements for radioactive substances contained in wastewater discharges may be imposed in the future.

Definitions

NY0027065

JA 144

Regional Administrator: Regional Administrator
Region II
Environmental Protection Agency
26 Federal Plaza
New York, New York 10007
ATTN: Status of Compliance Branch

State Certifying Agency:

Mr. Russel Mt. Pleasant, P.E., Chief
Bureau of Monitoring and Surveillance,
Division of Pure Waters,
N.Y.S. Department of Environmental Conservation,
50 Wolf Rd.
Albany, N.Y. 12201

Daily - each operating day.

Weekly - every seventh day (the same day each week) and a normal operating day.

Monthly - one day each month (the same day each month) and a normal operating day. (i.e. the 2nd Tuesday of each month)

Daily Average - the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the production or commercial facility was operating.

Daily Maximum - the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

Net - the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount of a pollutant contained in the surface water body intake source, measured in the same units, over the same period of time.

1. The intake source must be the same water body that is being discharged to.
2. In cases where the surface water body intake source is pretreated for the removal of pollutants, the intake level of a pollutant to be used in calculating the net, is that level contained after the pretreatment steps.

Composite - a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of 24 individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of 4 - 8 hours duration, grab samples shall be taken at a minimum of 30 minute intervals. For intermittent discharges of less than 4 hours duration grab samples shall be taken at a minimum of 15 minute intervals.

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Gross - the poundage contained in the discharge. (Gross applies when the intake source is a municipal or private water supply, ground water, or a surface water body other than the one being discharged to.)

Grab - An individual sample collected in less than 15 minutes.

EDP - Effective date of the permit.

Area Average Approach Velocity - water velocity determined by the volumetric flow rate divided by the average area available for intake flow.

Site River Water Temperature - Hudson River water temperature at the Indian Point site without the addition of thermal discharges from the Indian Point site.

Intake Temperature - the water temperature measured in the intake structure forebay in the inlet to the circulating system.

Net Rate of Addition of Heat - This value is determined by the product of the discharge (or cooling tower blowdown) flow, heat capacity and discharge (or blowdown)-intake temperature difference.

NYSDEC - New York State Department of Environmental Conservation. All reports and modifications the permittee provides to NYSDEC as required by this permit shall be submitted to the Director of Environmental Analysis in Albany and the Regional Supervisor of Environmental Analysis in New Paltz.

Operating Year - the time Unit 3 generated electrical power during each 12 month period commencing EDP.

Commission - Nuclear Regulatory Commission (formerly known as the Atomic Energy Commission).

Instantaneous Maximum - the highest discharge value at any time.

Continuous - a succession of measurements taken 24 hours per day at intervals of 15 minutes or less.

This permit and the authorization to discharge shall be binding upon the permittee and any successors in interest of the permittee and shall expire at midnight on July 30, 1980. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information, forms, and fees as are required by the agency authorized to issue NPDES permits no later than February 1, 1980.

By authority of

Gerald M. Hansler, P.E.
(Regional Administrator)

JUN 25 1975

(Date)

Mayer Scolnick
(Signature)

Mayer Scolnick,
Director
Water Enforcement Branch
Enforcement and Regional
Counsel Division

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Exhibit C

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10007

NOTICE OF ISSUANCE OF FINAL DETERMINATION

No. NPDES 75-152

Date: FEB 28 1975

Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final National Pollutant Discharge Elimination System (NPDES) permit to Orange and Rockland Utilities, Inc.

to discharge pollutants into waters of the United States. Public Notice of the tentative determinations contained in the permit was given on May 31, 1974 under NPDES No. 74-948. These tentative determinations were based on Proposed Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category as published at 39 Fed. Reg. p. 8294 et. seq. (March 4, 1974), the certification received from the State of New York Department of Environmental Conservation, and §316(b) of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, "the Act"), 33 U.S.C. §1341. Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category were published at 39 Fed. Reg. p. 36198 et. seq. (October 8, 1974). The limitations contained in the Final Determination were arrived at by application of the Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category, the certification received from the State of New York Department of Environmental Conservation pursuant to §401 of the Act, the Criteria Governing Thermal Discharges, 6 NYCRR Part 704, as approved by Region II, EPA pursuant to § 303 of the Act, and §316(b) of the Act.

The permittee's Bowline Point Generating Station has two Units operating, each with a maximum capacity of 621 megawatts-electric. There are four discharges resulting from the operations of the facility. Discharges 001 and 002 principally consist of condenser cooling water, with contributions from demineralizer pre-filter backwash, service water, strainer backwash, air preheater washdown and boiler blowdown. Discharges 001 and 002 have a maximum flow of 384,000 gallons per minute each and enter the Hudson River through a submerged diffuser. Discharge 003 is an infrequent discharge which occurs only during rainfall; it consists of storm drainage from the fuel storage area and has a maximum flow of 200 gallons per minute and is discharged into the Minisceongo Creek. Discharge 004 consists entirely of travelling screen backwash and has a maximum flow of 2400 gallons per minute; the discharge goes into a pond owned by the permittee. Discharges 001 and 002 are located approximately 400 feet east of Bowline Point and 1600 feet north of the Inlet Channel. Discharge 003 is located approximately 800 feet from the confluence of Minisceongo Creek and the Hudson River. Discharge 004 is located approximately 1200 feet west of Bowline Point and 1300 feet north of the Inlet Channel.

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975, unless an Adjudicatory Hearing is granted pursuant to 40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974).

Interested persons may request that such an Adjudicatory Hearing be held. Any request for an Adjudicatory Hearing must meet the requirements of the regulations cited above and must be received by the Environmental Protection Agency at the above address no later than ten days from the date of this Notice.

The permittee has submitted to EPA a timely request for the imposition of alternative effluent limitations relative to the thermal limitations imposed by the Final Effluent Guidelines and Standards for the Steam Electric Generating Point Source Category referenced above. After careful consideration of the data submitted by the permittee with respect to Section 316(a) of the Act, the Regional Administrator has determined that the information which the permittee has submitted is insufficient to determine whether or not the alternative thermal effluent limitations requested will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made. However, the Regional Administrator has determined that closed-cycle cooling is required in order to minimize adverse environmental impact, pursuant to Section 316(b) of the Act.

A copy of the Final Determination and other available information may be obtained by mail from the Status of Compliance Branch, EPA Region II, at the above address, or by calling (212) 264-9881, or in person between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday. Other forms and relevant documents may be inspected at that office. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Permit No.: NY0008010

Name of Permittee: Orange and Rockland
Utilities - Bowline Point-Units 1 and 2

Effective Date: March 31, 1975

Expiration Date: March 30, 1980

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
DISCHARGE PERMIT

In reference to the above application for a permit authorizing the discharge of pollutants in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, October 18, 1972 (33 U.S.C. 1251-1376) (hereinafter referred to as "the Act"), Orange and Rockland Utilities, Inc., Haverstraw, Rockland County, New York

(hereinafter referred to as "the Permittee")

is authorized by the Regional Administrator, Region II, U.S. Environmental Protection Agency to discharge from West Haverstraw, New York

to Hudson River and Minisceongo Creek

in accordance with the following conditions.

1. All discharges authorized herein shall be consistent with the terms and conditions of this permit; facility expansions, production increases or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application, or if such new or increased discharge does not violate the effluent limitations specified in this permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.
2. After notice and opportunity for a public hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:
 - a. violation of any terms or conditions of this permit;
 - b. obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
 - c. a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
3. Notwithstanding Condition 2 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, the Regional Administrator shall revise or modify this permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.
4. The permittee shall allow the Regional Administrator or his authorized representative and/or the authorized representative of the State water pollution control agency, in the case of non-Federal facilities, upon the presentation of his credentials:
 - a. to enter upon the permittee's premises in which an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;
 - b. to have access to and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
 - c. to inspect at reasonable times any monitoring equipment or monitoring method required by this permit;
 - d. to sample at reasonable times any discharge of pollutants.

5. The permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of treatment or control installed or utilized by the permittee to achieve compliance with the terms and conditions of this permit.
6. The issuance of this permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.
7. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.
8. The specific effluent limitations and other pollution controls applicable to the discharge permitted herein are set forth in the following conditions. The following conditions also set forth self-monitoring and reporting requirements. Unless otherwise specified, the permittee shall submit duplicate original copies of all reports to the head of the State water pollution control agency and the Regional Administrator. Except for data determined to be confidential under Section 308 of the Act, all such reports shall be available for public inspection at the office of the Regional Administrator. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act.

9. GENERAL LIMITATIONS

a. Except as specifically authorized in this permit, the permittee shall not discharge floating solids or visible foam.

b. Initial Limitations.

Unless specified otherwise in Conditions 10 and 11, the following conditions apply on the effective date of this permit and last for the duration of the permit.

(1) The permittee shall discharge condenser cooling water effluents such that the following conditions are satisfied:

<u>Discharge No.</u>	<u>Effluent Limit</u>
001,002	(a) The discharge temperature shall not exceed 39°C (102°F).
	(b) The discharge-intake temperature difference shall not exceed 12.8°C (23°F).
Sum of 001 and 002	(c) The net rate of addition of heat to the receiving water shall not exceed 1.46 Billion Kcal/hr. (5.8 Billion BTU/hr.)
001,002	(d) Free available chlorine shall not exceed 0.2 mg/l, nor shall the amount of available chlorine exceed 22 kg/day (48.5 lb/day) and chlorination shall not occur when the intake water temperature is below 50°F.
	(e) The pH shall not be less than 6.0 nor greater than 9.0 at any time, unless the pH of the intake falls outside this range, in which case the pH of the discharge shall not vary more than 0.2 pH units from the pH of the intake.

(2) The intake velocity at the travelling screens shall not exceed a daily average of 0.77 feet per second.

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Discharge Serial No.	Parameter	Discharge Limitation in kg/day (lbs/day-Gross)		Other Limitations (Gross)	
		Daily Average	Daily Maximum	Average	Maximum
003	Oil & Grease			15 mg/l	20 mg/l

(4) Boiler Chemical Cleaning Wastes shall not be discharged into the condenser cooling water or any other wastewater stream or navigable waterway or tributary thereof.

(5) The discharges shall be limited so as to comply with the following conditions.

- (a) The water temperature at the surface of an estuary shall not be raised to more than 90°F at any point.
- (b) At least 50 percent of the cross sectional area and/or volume of the flow of the estuary including a minimum of one-third of the surface as measured from water edge to water edge at any stage of tide, shall not be raised to more than 4 Fahrenheit degrees over the temperature that existed before the addition of heat of artificial origin or a maximum of 83°F whichever is less.
- (c) From July through September, if the water temperature at the surface of an estuary before the addition of heat of artificial origin is more than 83°F an increase in temperature not to exceed 1.5 Fahrenheit degrees at any point of the estuarine passageway as delineated above, may be permitted.

(6) No residue of oil and floating substances attributable to sewage, industrial wastes or other wastes nor visible oil film nor globules of grease.

(7) No suspended, colloidal or settleable solids from sewage, industrial wastes or other wastes which will cause deposition or be deleterious for any best usage determined for the specific waters which are assigned to each class.

(8) Any person, firm or other entity, discharging suspended solids into a navigable waterway of the United States or tributary, thereof, may be required to reimburse the Federal Government for any additional Federal maintenance dredging cost, which results from the discharge of suspended solids.

10. Required Limitations.

(a) The following conditions apply on the final date specified in Condition 11 and last until the permittee is notified otherwise:

(1) There shall be no discharge of heat from the main condensers of Bowline Point, Unit 1 and Unit 2 except heat may be discharged in blowdown from recirculated cooling water systems provided the temperature at which the blowdown is discharged does not exceed at any time the lowest temperature of recirculated cooling water prior to the addition of make-up water.

(2) The permittee shall discharge cooling system effluents such that the following conditions are satisfied:

Discharge Serial

No. or Type

Unit 1 and Unit 2

Cooling Tower Blowdown
(service cooling water is
not included)

Effluent Limit

(a) The blowdown temperature shall
not exceed 37.2°C (99°F).

Sum of Unit 1 and Unit 2
Cooling Tower Blowdown (service
cooling water is not included)

(b) The net rate of addition of heat to
the receiving water shall not exceed:

(1) 0.023 Billion kcal/hr. (0.090
Billion BTUs/hr.) during October
through May.

(2) 0.015 Billion kcal/hr. (0.058
Billion BTUs/hr.) during June
through September.

(3) Thermal Discharges

All thermal discharges to the waters of the State shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.

(4) No toxic wastes and deleterious substances in amounts that will interfere with use for primary contact recreation or that will be injurious to edible fish or shellfish or the culture or propagation thereof, or which in any manner shall adversely affect the flavor, color, odor or sanitary condition thereof, or impair the waters for any other best usage as determined for the specific waters which are assigned to this class.

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11. SCHEDULE OF COMPLIANCE FOR CONDITION 10.

The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance* with the schedule date and requirement.

- a. The permittee shall complete an engineering report and submit it to the State Agency in accordance with State requirements* by January 1, 1977.
- b. The permittee shall complete final plans and specifications for the treatment facilities and submit it to the State Agency in accordance with State requirements* by June 1, 1977.
- c. The permittee shall submit a report detailing its progress toward completion of the facilities required to comply with Condition 10 by March 1, 1978, December 1, 1978, September 1, 1979, and June 1, 1980.
- d. The permittee shall complete construction of the facilities by April 1, 1981.
- e. The permittee shall attain the operational levels required to achieve the limits specified in Condition 10 by July 1, 1981.

*Each notice of noncompliance shall include the following information:

- (1) a short description of the noncompliance;
- (2) a description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) a description of any factors which tend to explain or mitigate the noncompliance; and,
- (4) an estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next schedule requirement on time.

All reports, plans and/or specifications that propose new or modified waste treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are to be built.

12. MONITORING AND RECORDING.

The permittee shall monitor and record the quantitative values of each discharge according to the following schedule and other provisions. For each discharge and for each Sampling Schedule listed below, the flow (in gallons per day) shall be measured.* Where net values are listed in Conditions 9(b) and/or 10 the surface water intake is to be sampled with the same frequency and type of sample as specified below for each required parameter.

a. Sampling Schedule for Discharge Serial Nos. 001 and 002

The following sampling schedule shall commence on July 1, 1975 and last for the duration of the permit:

(1)

<u>Parameter</u>	<u>Minimum Freq. of Analysis</u>	<u>Sample Type</u>
Discharge temperature	Continuous	
Intake temperature	Continuous	
pH	Twice weekly	Grab**
Free available chlorine	Continuous during chlorination periods	

(2) Discharge flow and the intake velocity at the travelling screens shall be continuously monitored by recording the operating mode of the circulating water pumps, the discharge-intake temperature difference, and plant output.

* Methods, equipment, installation and procedures of flow measurement shall conform to those prescribed in the Water Measurement Manual, U.S. Department of the Interior, Bureau of Reclamation, Washington, D.C., 1967.

** Grab samples only shall be taken for analysis of dissolved oxygen, oil and grease, pH and any bacteriological analysis. Care shall be exercised when collecting a composite sample such that the proper preservative is present in the sample container during sample collection. Depending on the analysis to be conducted, several different containers and preservation techniques may be required. Samples shall be analyzed as quickly as possible after collection and in no case shall the maximum holding time exceed that contained in the references cited in Condition 12 (g).

(b) Chemical Sampling Schedule

(1) Sampling Schedule for Discharge 003 (storm drainage from fuel storage area) - Hourly grab samples for Oil and Grease shall be taken over the duration of discharge 003. The volume and duration of the discharge shall also be recorded.

(c) Tri-axial Isothermal Measurements

(1) By June 1, 1975, the company shall file for approval with the Regional Administrator and NYSDEC at its offices in New Paltz, and in Albany a report for tri-axial isothermal measurements, in alternate months for the first year after the effective date of the permit and in August for all subsequent years of the permit, in the waters receiving the discharge. The program will be implemented by August 1, 1975 and provide for temperature measurements in increments of 1°F down to a level of 1°F temperature excess above addition of heat of artificial origin. The surveys shall not be required during the months of December, January, February and March. Such reports shall be due the 20th of the month following that in which the survey was conducted. Additional surveys may be required if deemed necessary.

(d) Modifications to Sampling Schedules

The permittee may submit for approval an alternate schedule(s) to account for any realignment of discharges, for substitutions of parameters to be sampled, for analytical and sampling methods to be utilized, for realignment of sampling locations so that concentrations to be measured are within reliable sensitivity ranges of the analytical techniques, and for the compositing by volume of individual discharge samples to make a single plant sample. With regard to substituting parameters such as TOC or COD for BOD, the permittee shall provide test data to support the correlation between the parameters.

If the permittee monitors any pollutant more frequently than is required by this permit, he shall include the results of such monitoring in the calculation and reporting of the values required in the Discharge Monitoring Report Form (EPA Form 3320-1 (10-72)) in Condition 12(h). Such increased frequency shall be indicated on the Discharge Monitoring Report Form.

e. Quality Control

Adequate care shall be maintained in obtaining, recording, and reporting the required data on effluent quality and quantity, so that the precision and accuracy of the data will be equal to or better than that achieved by the prescribed standard analytical procedures.

The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at sufficiently frequent intervals to ensure accuracy of measurements.

Sampling shall be representative of the volume and quality of effluent discharged over the sampling and reporting period.

The permittee is responsible for assuring that the methodology used is reliable for their specific wastes in their laboratory. The permittee must be able to demonstrate to the Regional Administrator that they have a viable quality control program.

f. Recording

The permittee shall maintain and record the results of all required analyses and measurements and shall record, for all samples, the date and time of sampling, the sample method used, the dates analyses were performed, who performed the sampling and analyses, and the results of such analyses.

All records shall be retained for a minimum of 3 years, such a period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator. The permittee also shall retain all original stripchart recordings from any continuous monitoring instrumentation and any calibration and maintenance records for a minimum of 3 years, such period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator.

The permittee shall provide the above records and shall demonstrate the adequacy of the flow measuring and sampling methods upon request of the Regional Administrator. The permittee shall identify the effluent sampling point used for each discharge pipe by providing a sketch or flow diagram, as appropriate, showing the locations.

g. Sampling and Analysis

All sampling and analytical methods used to meet the monitoring requirements specified above shall conform to guidelines establishing test procedures for the analysis of pollutants, published pursuant to Section 304(g) of the Federal Water Pollution Control Act, as amended. If the Section 304(g) guidelines do not specify test procedures for any pollutants required to be monitored by this permit and until such guidelines are promulgated, sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless otherwise specified by the Regional Administrator, conform to the latest edition of the following references:

Standard Methods for the Examination of Water and Wastewaters, 13th Edition, 1971 American Public Health Association, New York, New York 10019.

A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis, 1972, American Society for Testing and Materials, Philadelphia, Pennsylvania 19103.

W.Q.O. Methods for Chemical Analysis of Water and Wastes, April 1971, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, NEKC, 1014 Broadway, Cincinnati, Ohio 45268.

h. Reporting

The results of the above monitoring requirements shall be reported by the permittee in the units specified in Conditions 9(b) and 10. A report or a written statement shall be submitted even if no discharge occurred during the reporting period. A report shall also be submitted if there have been any modifications in the waste collection, treatment, and disposal facilities, changes in operations procedures, or other significant activities which alter the quality and quantity of the discharges or otherwise concern these Conditions. Permanent elimination of a discharge shall be promptly reported by the permittee in writing to the Regional Administrator.

The permittee shall include in this report any previously approved non-standard analytical methods used. Copies of the report shall be sent to both the Regional Administrator and the State Agency on the 10th of each month reporting the monitoring data from the previous month. A Discharge Monitoring Report Form [EPA Form 3320-1 (10-72)] shall be used for reporting.

13. SLUDGE DISPOSAL.

Collected screenings, sludges, and other solids and precipitates separated from the permittee's discharges authorized by this permit and/or intake or supply water by the permittee shall be disposed of in such a manner as to prevent entry of such materials into navigable waters or their tributaries. Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment may be returned to their water body habitat. The permittee shall report on all effluent screenings, sludges and other solids associated with the discharge herein described. The following data shall be reported quarterly together with the monitoring data required in Condition 12:

- a. the method by which they were removed and transported;
- b. their final disposal locations.

14. DISCHARGE CONTAINING PARAMETER NOT PREVIOUSLY REPORTED.

The permittee shall not discharge any wastewater containing a substance or characterized by a parameter which was indicated as absent in its NPDES Permit Application. In the event of such a discharge, the permittee shall notify the Regional Administrator and the State Agency prior to the discharge.

15. NON-COMPLIANCE WITH CONDITIONS.

- a. In the event the permittee is unable to comply with any of these conditions, due, among other reasons, to:
 - (1) breakdown of waste treatment equipment, (biological and physical-chemical systems including, but not limited to, all pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units);
 - (2) accidents caused by human error or negligence; or
 - (3) other causes, such as acts of nature,

the permittee shall notify the Regional Administrator and the State Agency immediately by telephone and in writing within five days.

b. The written notification shall include the following pertinent information:

- (1) cause of noncompliance;
- (2) a description of the noncomplying discharge including its impact upon the receiving waters;
- (3) anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance ;
- (4) steps taken by the permittee to reduce and eliminate the noncomplying discharge; and,
- (5) steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.

Permittee shall take all reasonable steps to minimize any adverse impact to navigable waters resulting from noncompliance with any effluent limitation specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

Nothing in this permit shall be construed to relieve the permittee from appropriate civil or criminal penalties for noncompliance.

16. BYPASS PROVISION.

There shall be no bypass of the waste treatment facilities which would allow the entry of untreated or partially treated wastes to the receiving waters.

17. AUTHORIZED SIGNATURE FOR REPORTING REQUIREMENTS.

All reports required to be submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, all reports must be signed by a general partner or the proprietor respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

DEFINITIONS

Regional Administrator: Regional Administrator
Region II
Environmental Protection Agency
26 Federal Plaza
New York, New York 10007
ATTN: Status of Compliance Branch

State Certifying Agency: Mr. Russell Mt. Pleasant, P.E., Chief
Bureau of Monitoring and Surveillance
Division of Pure Water
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12201

Daily - each operating day.

Weekly - every seventh day (the same day each week) and a normal operating day.

Monthly - one day each month (the same day each month) and a normal operating day. (i.e. the 2nd Tuesday of each month)

Daily Average - the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the production or commercial facility was operating. Where less than daily sampling is required by this permit, the daily average discharges in appropriate units as specified herein divided by the number of days during the calendar month when the measurements were made.

Daily Maximum - the highest discharge value occurring during any calendar day.

Net - the poundage contained in the discharge, less the poundage contained in the surface water body intake source over the same period of time.

1. The intake source must be the same water body that is being discharged to.
2. In cases where the surface water body intake source is pretreated for the removal of pollutants, the intake poundage to be used in calculating the net, is that poundage contained after the pre-treatment steps.

Composite - a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of 24 individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of 4 - 8 hours duration, grab samples shall be taken at a minimum of 30 minute intervals. For intermittent discharges of less than 4 hours duration grab samples shall be taken at a minimum of 15 minute intervals.

Gross - the poundage contained in the discharge. (Gross applies when the intake source is a municipal or private water supply, ground water, or a surface water body other than the one being discharged to.)

Grab - an individual sample collected in less than 15 minutes.

The rate of addition of heat to the receiving water is defined as the product of the discharge flow, heat capacity, and discharge-intake temperature difference.

NYSDEC - New York State Department of Environmental Conservation.

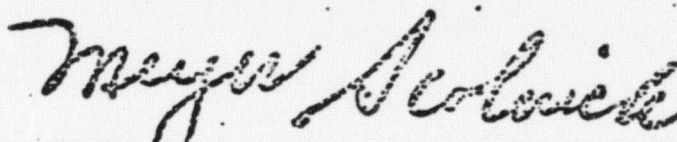
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This permit and the authorization to discharge shall be binding upon the permittee and any successors in interest of the permittee and shall expire on March 30, 1980. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information, forms, and fees as are required by the agency authorized to issue NPDES permits no later than 180 days prior to the above date of expiration.

By authority of

Gerald M. Hansler, P. E.
(Regional Administrator)

FEB 24 1975



Meyer Scolnick, Director
Enforcement and Regional
Counsel Division

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 Federal Plaza
New York, New York 10007

NOTICE OF ISSUANCE OF FINAL DETERMINATION

No. NPDES 75-150

Date: FEB 28 1975

Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final National Pollutant Discharge Elimination System (NPDES) permit to Central Hudson Gas and Electric Corporation.

to discharge pollutants into waters of the United States. Public Notice of the tentative determinations contained in the permit was given on May 31, 1974 under NPDES No. 74-944. These tentative determinations were based on Proposed Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category as published at 39 Fed. Reg. p. 8294 et. seq. (March 4, 1974), the certification received from the State of New York Department of Environmental Conservation, and §316(b) of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter, "the Act"), 33 U.S.C. §1341. Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category were published at 39 Fed. Reg. p. 36198 et. seq. (October 8, 1974). The limitations contained in the Final Determination were arrived at by application of the Final Effluent Guidelines and Standards for the Steam Electric Power Generating Point Source Category, the certification received from the State of New York Department of Environmental Conservation pursuant to §401 of the Act, the Criteria Governing Thermal Discharges, 6 NYCRR Part 704, as approved by Region II, EPA pursuant to § 303 of the Act, and §316(b) of the Act.

Application of the above-referenced Final Guidelines and Standards, the certification received from the New York State Department of Environmental Conservation and the Criteria Governing Thermal Discharges referenced above has resulted in changes from the limitations and schedules of compliance as they appeared in the Public Notice mentioned above. The significant changes are as follows:

(a) Chemical effluent limitations contained in the Draft Permit have been revised according to the Final Effluent Guidelines and Standards to reflect average concentrations of 30 mg/l and 15 mg/l for Total Suspended Solids and Oil and Grease, respectively, rather than 15 mg/l and 10 mg/l, respectively. Maximum limitations for Total Iron and Total Copper have been revised to reflect a concentration of 1 mg/l as compared to 2 mg/l in the Draft Permit.

The company has received a permit for the Roseton Generating Station. The plant has 2 units with a total nameplate capacity of 1200 MWe (600 MWe each). All boilers at the facility will be oil-fired. There will be five discharges from the facility (001-004 and sewage treatment plant effluent). Discharge 001, which contains travelling screen backwash, has a maximum flow of 2.4 MGD. Discharge 002, which contains condenser cooling water and auxiliary cooling water, has a maximum flow of 945 MGD. Discharge 003 results from storm drainage from various plant areas. Oil separators and traps will treat storm drainage prior to discharge. Discharge 004 is the effluent from a waste treatment facility, which treats all contaminated wastes, including boiler blowdown, demineralizer regeneration, air heater wash, boiler fireside wash, dust collector wash and boiler chemical cleaning wastes. Treatment consists of sedimentation, coagulation, flocculation, neutralization and oil separation. Discharge 004 has an average flow of 400,000 gallons per day. In addition to Discharges 001-004, the plant presently has a discharge of 21,600 gallons per day from a sewage treatment plant.

All effluents are discharged along the west bank of the Hudson River, except for Discharge 004, which is discharged to an unnamed stream approximately 500 feet upstream from the confluence with the Hudson River. Discharge 002 is a submerged multiport diffuser. The diffuser is oriented parallel to the longitudinal river axis, with 14 ports discharging perpendicular to the river flow. All discharges are located approximately 3.5-4 miles north of the Newburgh Bridge. The Hudson River at the points of discharge has a New York State Classification of Class C. The best usage of such waters are stated to be fishing and any other usages except as source of water supply for drinking, culinary or food processing purposes.

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975 unless an Adjudicatory Hearing is granted pursuant to 40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974).

Interested persons may request that such an Adjudicatory Hearing be held. Any request for an Adjudicatory Hearing must meet the requirements of the regulations cited above and must be received by the Environmental Protection Agency at the above address no later than ten days from the date of this Notice.

The permittee has submitted to EPA a timely request for the imposition of alternative effluent limitations relative to the thermal limitations imposed by the Final Effluent Guidelines and Standards for the Steam Electric Generating Point Source Category referenced above. After careful consideration of the data submitted by the permittee with respect to Section 316(a) of the Act, the Regional Administrator has determined that the information which the permittee has submitted is insufficient to determine whether or not the alternative thermal effluent limitations requested will assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water into which the discharge is to be made. However, the Regional Administrator has determined that closed-cycle cooling is required in order to minimize adverse environmental impact, pursuant to Section 316(b) of the Act.

A copy of the Final Determination and other available information may be obtained by mail from the Status of Compliance Branch, EPA Region II, at the above address, or by calling (212) 264-9381, or in person between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday. Other forms and relevant documents may be inspected at that office. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Permit No.: NY0008231Name of Permittee: Central Hudson Gas and
Electric Corporation - Roseton Generating
StationEffective Date: March 31, 1975Expiration Date: March 30, 1980NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT
DISCHARGE PERMIT

In reference to the above application for a permit authorizing the discharge of pollutants in compliance with the provisions of the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, P.L. 92-500, October 18, 1972 (33 U.S.C. §1251-1376) (hereinafter referred to as "the Act"), Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12602

(hereinafter referred to as "the permittee")

is authorized by the Regional Administrator, Region II, U. S.
Environmental Protection Agency
to discharge from Roseton Generating Station

Roseton, Orange County, New York

to Hudson River

in accordance with the following conditions.

NY0008231

1. All discharges authorized herein shall be consistent with the terms and conditions of this permit; facility expansions, production increases or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application, or if such new or increased discharge does not violate the effluent limitations specified in this permit, by submission to the Regional Administrator of notice of such new or increased discharges of pollutants; the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by this permit shall constitute a violation of the terms and conditions of this permit.
2. After notice and opportunity for a public hearing, this permit may be modified, suspended, or revoked in whole or in part during its term for cause including, but not limited to, the following:
 - a. Violation of any terms or conditions of this permit;
 - b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
 - c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.
3. Notwithstanding Condition 2 above, if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the discharge authorized herein and such standard or prohibition is more stringent than any limitation upon such pollutant in this permit, the Regional Administrator shall revise or modify this permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.
4. The permittee shall allow the Regional Administrator or his authorized representative and/or the authorized representative of the State water pollution control agency, in the case of non-Federal facilities; upon the presentation of his credentials:
 - a. To enter upon the permittee's premises in which an effluent source is located or in which any records are required to be kept under the terms and conditions of this permit;
 - b. To have access to and copy at reasonable times any records required to be kept under the terms and conditions of this permit;
 - c. To inspect at reasonable times any monitoring equipment or monitoring method required by this permit;
 - d. To sample at reasonable times any discharge of pollutants.

5. The permittee shall at all times maintain in good working order and operate as efficiently as possible any facilities or systems of treatment or control installed or utilized by the permittee to achieve compliance with the terms and conditions of this permit.

6. The issuance of this permit does not convey any property rights either in real estate or material, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of rights, nor any infringement of Federal, State or local laws or regulations; nor does it obviate the necessity of obtaining State or local assent required by law for the discharge authorized.

7. This permit does not authorize or approve the construction of any onshore or offshore physical structures or facilities or the undertaking of any work in any navigable waters.

8. The specific effluent limitations and other pollution controls applicable to the discharge permitted herein are set forth in the following conditions. The following conditions also set forth self-monitoring and reporting requirements. Unless otherwise specified, the permittee shall submit duplicate original copies of all reports to the head of the State water pollution control agency and the Regional Administrator. Except for data determined to be confidential under Section 308 of the Act, all such reports shall be available for public inspection at the office of the Regional Administrator. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the Act.

9. General Limitations

a. Except as specifically authorized in this permit, the permittee shall not discharge visible foam, except that resulting from agitation of River water or contained in River water.

b. Initial Limitations-Unless specified otherwise in Conditions 10 and 11, the following conditions apply on the effective date of this permit and last for the duration of the permit.

(1) The permittee shall discharge condenser cooling water effluents such that the following conditions are satisfied:

(a)

Discharge
Serial No.

Effluent
Limit

002.

- (a) The discharge temperature shall not exceed 37.2°C (99.0°F).*
- (b) The discharge-intake temperature difference shall not exceed 10.0°C (18.0°F)*.
- (c) The net rate of addition of heat to the receiving water shall not exceed 1.49×10^9 Kcal/hr (5.91×10^9 BTU/hr).
- (d) Free available chlorine shall not exceed 0.5 mg/l.**
- (e) The pH shall not be less than 6.0 nor greater than 9.0 at any time.***

* These limitations may be exceeded during periods when one or more condensing units are operating with only one circulating water pump (per unit), due to pump breakdown or routine pump maintenance. In the event of pump breakdown, the permittee shall take corrective action as soon as possible. Where possible, routine pump maintenance resulting in these limitations being exceeded should be avoided during June-September. The permittee shall indicate on the Discharge Reporting Form (1) which circulating water pumps, if any, were not in operation, (2) the dates and times such pumps were not operating, (3) the reason(s) for such pumps not operating, and (4) the period(s) (dates and times) during which the limitations were exceeded. In no case shall these limitations be exceeded more than 10% of the time during June-September. The discharge-intake temperature limitation may be exceeded when the intake temperature is less than 50°F . During such periods, the discharge-intake temperature difference shall not exceed 20.0°C (36.0°F) at reduced flow and/or when circulating water is recirculated for deicing purposes.

** Chlorination shall be limited to one hour each day.

*** When the intake pH is less than 6.0, the discharge pH shall not be less than the intake pH nor greater than 9.0; when the intake pH is greater than 9.0, the discharge pH shall not be less than 6.0 nor greater than the intake pH.

(b)

The water temperature at the surface of an estuary shall not be raised to more than 90°F at any point provided further, at least 50 percent of the cross sectional area and/or volume of the flow of the estuary including a minimum of one-third of the surface as measured from water edge to water edge at any stage of tide, shall not be raised to more than 4°F over the temperature that existed before the addition of heat of artificial origin or a maximum of 83°F, whichever is less. However, during July through September if the water temperature at the surface of an estuary before the addition of heat of artificial origin is more than 83°F, an increase in temperature not to exceed 1.5°F, at any point of the estuarine passageway as delineated above, may be permitted.

(2) The area average approach velocity at a point 24" in front of travelling screens shall not exceed 0.83 feet per second at full flow nor feet per second at reduced flow.

10. Required Limitations.

(a) Beginning October 1, 1975 and lasting until the date of expiration of this permit, the permittee shall comply with the values listed below for those parameters indicated:

Discharge Serial Number or Type	Parameter	Discharge Limitations in kg/day(lbs/day)-net		Other Limitations (Net)	
		Daily Average	Daily Maximum	Average	Maximum
004(Waste Treatment Plant Effluent)	Total Suspended Solids	45.4(100)	199(438)		
Not Including Boiler Chemical Cleaning, Air Preheater Wash, Dust Collector and Boiler Fireside Wash Wastes	Total Iron	1.5(3.3)	2.0(4.4)		
	Oil & Grease	15.2(33.4)	39.7(87.4)		
	Total Copper	1.5(3.3)	2.0(4.4)		
004(Waste Treatment Plant Effluent)	Total Suspended Solids				114(250)
Air Preheater Wash Wastes Only*	Total Iron				1.14(2.5)
	Total Copper				1.14(2.5)
	Oil and Grease				22.7(50)
004(Waste Treatment Plant Effluent)- Boiler Chemical Cleaning Wastes Only*	Total Suspended Solids				94.9(209)
	Total Iron				0.95(2)
	Total Copper				0.95(2)
	Total Zinc				2.9(6.3)
	Total Nickel				3.8(8.4)
	Oil and Grease				18.9(41)
004(Wastes Treatment Plant Effluent)-Boiler Fireside Wash Wastes Only*	Total Suspended Solids				11.4(25)
	Total Iron				0.11(0.2)
	Total Copper				0.11(0.2)
	Oil and Grease				2.3(5)
004(Waste Treatment Plant Effluent)- Dust Collector Wash Wastes Only*	Total Suspended Solids				22.7(50)
	Total Iron				0.23(0.5)
	Total Copper				0.23(0.5)
	Oil and Grease				4.5(10)
003,004 LWS	pH Range	6.0-9.0 at all times			
	Total Suspended Solids				30(66)
	Oil and Grease				20(44)

(2)

Discharge Serial Number or Type	Parameter	Discharge Limitations in kg/day (lbs/day) - Gross		Other Limitations (Gross)	
		Average	Maximum	Average	Maximum
Sewage Treatment Plant Effluent	pH Range			6.0-9.0 at all times	
	BOD ₅ ***	2.5(5.4)	3.7(8.1)		
	Total Suspended Solids***	2.5(5.4)	3.7(8.1)		
	Fecal Coliform****			200MPN/100 ml	400MPN/100 ml

* Limitations for these wastes are specified in kg/cleaning (lbs/cleaning) or kg/wash (lbs/wash). The limitations for the applicable waste source shall be added to the limitations for the Waste Treatment Plant Effluent-Not including Boiler Chemical Cleaning, Air Preheater Wash, Dust Collector Wash and Boiler Fireside Wash Wastes to determine the total allowable discharge over the duration of the discharge of wash and/or cleaning wastes.

** These are gross limitations.

***The average and maximum limits specified for these parameters shall be the arithmetic mean over a 30 consecutive day and 7 consecutive day period, respectively.

****The average and maximum limits specified for these parameters shall be the geometric mean over a 30 consecutive day and 7 consecutive day period, respectively.

NY0003231

(3)
Discharge
Serial No.
All Discharges

Parameter
Oil and Floating
Substances

Limit
No residue attributable to
sewage, industrial wastes or
other wastes nor visible oil
film nor globules of grease.

Taste and Odor-
Producing Substances,
Toxic Wastes and
Deleterious Substances

None in amounts that will be
injurious to fish life or which
in any manner shall adversely
effect the flavor, color or
odor thereof, or impair the waters
for any best usage as determined
for the specific waters which are
assigned to each class.

Suspended, Colloidal
or Settleable Solids

None from sewage, industrial
wastes or other wastes which
will cause deposition or be
deleterious for any best usage
determined for the specific
waters which are assigned to
each class.

(b) Beginning no later than July 1, 1981 and lasting until notified
otherwise, the permittee shall comply with the following conditions:

(1) There shall be no discharge of heat from the main con-
densers except heat may be discharged in blowdown from recirculated cooling
water system provided the temperature
at which the blowdown is discharged does not exceed at any time the
lowest temperature of recirculated cooling water prior to the addition
of make-up water.

(2) The permittee shall discharge cooling system effluents such
that the following conditions are satisfied:

Discharge Serial
No. or Type

Cooling Tower Blowdown

Effluent Limit

(a) The blowdown temperature shall not
exceed 37.2°C (99.0°F).

(b) The net rate of addition of heat to the
receiving water shall not exceed
 17.6×10^6 Kcal/hr. (73,600 BTU/hr.)
during June-Sept.; (2) 112×10^6 Kcal/hr.
(112x10⁶ BTU/hr.) during Oct.-May.

(a) The discharge temperature shall not excee
37.2°C (99.0°F).

(b) The net rate of addition of heat to the
receiving water shall not exceed
 110×10^6 Kcal/hr. (460,000 BTU/hr.).

(3) All thermal discharges to the waters of the State shall assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the body of water.

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11 (a) Schedule of Compliance for Condition 10(a). The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance* with the schedule date and requirement:

(a) The permittee shall attain the operational levels required to achieve the limits specified in Condition 10(a) by October 1, 1975.

* Each notice of noncompliance shall include the following information:

- (1) A short description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next scheduled requirement on time.

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11(b) Schedule of Compliance for Condition 10(b). The permittee shall comply with the following schedule and shall report to both the Regional Administrator and the State Agency within 14 days following each date on the schedule detailing its compliance or noncompliance* with the schedule date and requirement:

(a) The permittee shall complete an engineering report and submit it to the Regional Administrator and State Agency in accordance with State requirements* by January 1, 1977.

(b) The permittee shall complete final plans and specifications for the treatment facilities and submit it to the Regional Administrator and State Agency in accordance with State requirements* by June 1, 1977.

(c) The permittee shall submit reports detailing its progress toward completion of the facilities required to comply with Condition 10(b) by March 1, 1978, December 1, 1978, September 1, 1979, and June 1, 1980.

(d) The permittee shall complete construction of the facilities by April 1, 1981.

(e) The permittee shall attain the operational levels required to achieve the limits specified in Condition 10(b) by July 1, 1981.

*Each notice of noncompliance shall include the following information:

- (1) A short description of the noncompliance;
- (2) A description of any actions taken or proposed by the permittee to comply with the elapsed schedule requirement without further delay;
- (3) A description of any factors which tend to explain or mitigate the noncompliance; and
- (4) An estimate of the date permittee will comply with the elapsed schedule requirement and an assessment of the probability that permittee will meet the next schedule requirement on time.

All reports, plans and/or specifications that propose new or modified waste treatment and/or disposal facilities must be approvable and signed, and sealed, by a professional engineer, licensed to practice in the State in which the facilities are to be built.

12. Monitoring and Recording. The permittee shall monitor and record the quantitative values of each discharge according to the following schedules and other provisions: For each discharge and for each Sampling Schedule listed below, the flow (in gallons per day) shall be measured.* Where not values are listed in Conditions 9(b) and/or 10 the surface water intake is to be sampled with the same frequency and type of sample as specified below for each required parameter.

(a) Sampling Schedule for the Cooling Water Discharge
(Discharge Serial No. 002) - The following sampling schedule shall commence on April 1, 1975 and last for the duration of the permit:

<u>Parameter</u>	<u>Minimum Freq. of Analysis</u>	<u>Sample Type</u>
Discharge temperature	Continuous	
Intake temperature	Continuous	
pH	Twice weekly	Grab**
Free available chlorine	Continuous during chlorination periods***	

(2) The area average approach velocity shall be calculated 24" in front of the travelling screens on the basis of flow area and pumping capacity on a daily basis.

* The flow of condenser cooling water discharges shall be monitored and recorded by hourly recording of the operating mode of the circulating water pumps. Any changes in the flow rate of each circulating water pump shall be recorded, including the date and time, and reported monthly together with the Discharge Reporting Form. The permittee shall indicate whether any circulating pumps were not in operation due to pump breakdown or required pump maintenance and the period(s) (dates and times) the discharge temperature limitation was exceeded, if at all. For all other discharges or internal waste streams (only those which are limited), the flow shall be measured and recorded at a frequency coinciding with the most frequently sampled parameter. Methods, equipment, installation and procedures shall conform to those prescribed in the Water Measurement Manual, U.S. Department of the Interior, Bureau of Reclamation, Washington, D.C., 1967.

** Grab samples only shall be taken for analysis of dissolved oxygen, oil and grease, pH and bacteriological analysis, except where specified otherwise. Care shall be exercised when collecting a composite sample such that the proper preservative is present in the sample container during sample collection. Depending on the analysis to be conducted, several different containers and preservation techniques may be required. Samples shall be analyzed as quickly as possible after collection and in no case shall the maximum holding time exceed that contained in the reference cited in Condition 12 (g)

***This requirement shall commence by July 1, 1975. Until that time, daily grab samples shall be taken.

(b) Sampling Schedule for Discharges Other Than Condenser Cooling Water and Service Cooling Water.

Sampling Schedules I and II - Schedule I shall commence April 1, 1975 and last for 7 months. Schedule II shall commence upon completion of Schedule I and continue for the duration of the permit.

Discharge Serial No. or Type	Parameter	Minimum Freq. of Analysis		Sample Type
		Sched. I	Sched. II	
004 (Waste Treatment Plant Effluent)	Flow, pH	Continuous Monitoring		
	Total Suspended Solids*	Twice Weekly	Twice Monthly	Composite
	Total Iron*	Twice Weekly	Twice Monthly	Composite
	Oil & Grease*	Twice Weekly	Twice Monthly	Grab
	Total Copper*	Twice Weekly	Twice Monthly	Composite
	Total Nickel*			
Sewage Treatment Plant Effluent	Total Zinc*			
	pH	Twice Monthly	Monthly	Grab
	BOD ₅ , Total Suspended Solids	Twice Monthly	Monthly	Composite
	Fecal Coliform	Twice Monthly	Monthly	Grab
Municipal Intake Water	Flow	Continuous Monitoring		

Sampling Schedule III - The following schedule shall commence April 1, 1975 and continue for the duration of the permit.

Discharge 003 shall be monitored for pH, Total Suspended Solids and Oil and Grease by taking grab samples 15 minutes and 30 minutes after commencement of the discharge and every 2 hours thereafter during discharge.

* During discharge of boiler fireside wash, dust collector wash and/or air preheater wash wastes, Total Suspended Solids, Total Iron, Total Copper and Oil and Grease shall be monitored by taking composite samples (grab every 4 hours for Oil and Grease) over the duration of the wash wastes discharge. During discharge of boiler chemical cleaning wastes, Total Suspended Solids, Total Iron, Total Copper, Total Nickel, Total Zinc and Oil and Grease shall be monitored by taking composite samples (grab every 4 hours for Oil and Grease) over the duration of the cleaning wastes discharge. Monitoring for Total Nickel and Total Zinc is required only during discharge of the aforementioned batch wastes.

(4) By June 1, 1975, the company shall file for approval with the Regional Administrator and NYSDEC at its offices in New Paltz and in Albany a report for tri-axial isothermal measurements, in alternate months, in the waters receiving the discharge. The program will be implemented by August 1, 1975 and provide for temperature measurements in increments of 1°F down to a level of 1°F temperature excess above addition of heat of artificial origin. The surveys shall not be required during the months of December, January, February and March. Such reports shall be due the 20th of the month following that in which the survey was conducted. Surveys will be required for the first year after the effective date of the permit and in August of each subsequent year, and may be required at other times if deemed necessary.

(d) Modifications to Sampling Schedules - The permittee may submit for approval an alternate schedule(s) to account for any realignment of discharges, for substitutions of parameters to be samples, for analytical and sampling methods to be utilized, for realignment of sampling locations so that concentrations to be measured are within reliable sensitivity ranges of the analytical techniques, and for the compositing by volume of individual discharge samples to make a single plant sample. With regard to substituting parameters such as TOC, or COD for BOD, the permittee shall provide test data to support the correlation between the parameters.

If the permittee monitors any pollutant more frequently than is required by this permit, he shall include the results of such monitoring in the calculation and reporting of the values required in the Discharge Monitoring Report Form (EPA Form 3320-1 (10-72)) in Condition 12(h). Such increased frequency shall be indicated on the Discharge Monitoring Report Form.

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(e) Quality Control - Adequate care shall be maintained in obtaining, recording, and reporting the required data on effluent quality and quantity, so that the precision and accuracy of the data will be equal to or better than that achieved by the prescribed standard analytical procedures.

The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at sufficiently frequent intervals to ensure accuracy of measurements.

Sampling shall be representative of the volume and quality of effluent discharged over the sampling and reporting period.

The permittee is responsible for assuring that the methodology used is reliable for their specific wastes in their laboratory. The permittee must be able to demonstrate to the Regional Administrator that they have a viable quality control program.

(f) Recording - The permittee shall maintain and record the results of all required analyses and measurements and shall record, for all samples, the date and time of sampling, the sample method used, the dates analyses were performed, who performed the sampling and analyses, and the results of such analyses.

All records shall be retained for a minimum of 3 years, such a period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator. The permittee also shall retain all original stripchart recordings from any continuous monitoring instrumentation and any calibration and maintenance records for a minimum of 3 years, such period to be extended during the course of any unresolved litigation or when so requested by the Regional Administrator.

The permittee shall provide the above records and shall demonstrate the adequacy of the flow measuring and sampling methods upon request of the Regional Administrator. The permittee shall identify the effluent sampling point used for each discharge pipe by providing a sketch or flow diagram, as appropriate, showing the locations.

(g) Sampling and Analysis

All sampling and analytical methods used to meet the monitoring requirements specified above shall conform to guidelines establishing test procedures for the analysis of pollutants, published pursuant to Section 304(g) of the Federal Water Pollution Control Act, as amended. If the Section 304(g) guidelines do not specify test procedures for any pollutants required to be monitored by this permit and until such guidelines are promulgated, sampling and analytical methods used to meet the monitoring requirements specified in this permit shall, unless otherwise specified by the

Regional Administrator, conform to the latest edition of the following references:

Standard Methods for the Examination of Water and Wastewaters, 13th Edition, 1971 American Public Health Association, New York, New York 10019.

A.S.T.M. Standards, Part 23, Water; Atmospheric Analysis, 1972, American Society for Testing and Materials, Philadelphia, Pennsylvania 19103.

W.Q.O. Methods for Chemical Analysis of Water and Wastes, April 1971, Environmental Protection Agency, Water Quality Office, Analytical Quality Control Laboratory, NERC, 1014 Broadway, Cincinnati, Ohio 45268.

(h) Reporting

The results of the above monitoring requirements shall be reported by the permittee in the units specified in Conditions 9(b) and 10. A report or a written statement shall be submitted even if no discharge occurred during the reporting period. A report shall also be submitted if there have been any modifications in the waste collection, treatment, and disposal facilities, changes in operations procedures, or other significant activities which alter the quality and quantity of the discharges or otherwise concern these Conditions. Permanent elimination of a discharge shall be promptly reported by the permittee in writing to the Regional Administrator.

The permittee shall include in this report any previously approved non-standard analytical methods used. Copies of the report shall be sent to both the Regional Administrator and the State Agency on the 10th of each month reporting the monitoring data from the previous month. A Discharge Monitoring Report form [EPA Form 3320-1 (10-72)] shall be used for reporting.

13. Sludge Disposal. Collected screenings, sludges, and other solids and precipitates separated from the permittee's discharges authorized by this permit and/or intake or supply water by the permittee shall be disposed of in such a manner as to prevent entry of such materials into navigable waters or their tributaries.* Any live fish, shellfish, or other animals collected or trapped as a result of intake water screening or treatment may be returned to their water body habitat. The permittee shall report on all effluent screenings, sludges and other solids associated with the discharge herein described. The following data shall be reported together with the monitoring data required in Condition 12:

- a. The method by which they were removed and transported;
- b. Their final disposal locations.

14. Discharge Containing Parameter Not Previously Reported. The permittee shall not discharge any wastewater containing a substance or characterized by a parameter which was indicated as absent in its NPDES Permit Application. In the event of such a discharge, the permittee shall notify the Regional Administrator and the State Agency prior to the discharge.

15. Non-Compliance with Conditions. In the event the permittee is unable to comply with any of these conditions, due, among other reasons, to:

(1) Breakdown of waste treatment equipment, (biological and physical-chemical systems including, but not limited to, pipes, transfer pumps, compressors, collection ponds or tanks for the segregation of treated or untreated wastes, ion exchange columns, or carbon absorption units);

(2) Accidents caused by human error or negligence; or

(3) Other causes, such as acts of nature,

*Live fish and non-separable solids from the washing of the intake were to

the permittee shall notify the Regional Administrator and the State Agency immediately by telephone and in writing within five days. The written notification shall include the following pertinent information:

- (1) Cause of noncompliance;
- (2) A description of the noncomplying discharge including its impact upon the receiving waters;
- (3) Anticipated time the condition of noncompliance is expected to continue, or if such condition has been corrected, the duration of the period of noncompliance;
- (4) Steps taken by the permittee to reduce and eliminate the noncomplying discharge; and
- (5) Steps to be taken by the permittee to prevent recurrence of the condition of noncompliance.

Permittee shall take all reasonable steps to minimize any adverse impact to navigable waters resulting from noncompliance with any effluent limitation specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

Nothing in this permit shall be construed to relieve the permittee from appropriate civil or criminal penalties for non-compliance.

16. Bypass Provision. There shall be no bypass of the waste treatment facilities which would allow the entry of untreated or partially treated wastes to the receiving waters.

17. Authorized Signature for Reporting Requirements. All reports required to be submitted by a corporation must be signed by a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge described in the application form originates. In the case of a partnership or a sole proprietorship, all reports must be signed by a general partner or a sole proprietor, respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

18. U.S. Army Corps of Engineers Requirements.

The United States Army Corps of Engineers conducts maintenance dredging of navigable waters and their tributaries pursuant to certain Federal statutes. The permittee should be aware of its possible responsibilities under the maintenance dredging program. Under these laws, any person, firm or entity discharging suspended solids into a navigable waterway of the United States, or tributary thereof, which contribute to the necessity for maintenance dredging of that waterway may be required to participate in the maintenance dredging program.

Definitions

Regional Administrator: Regional Administrator
Region II
Environmental Protection Agency
26 Federal Plaza
New York, New York 10007
ATTN: Status of Compliance Branch

State Certifying Agency: Mr. Russell Mt. Pleasant, Chief
Bureau of Monitoring and Surveillance
Division of Pure Waters
New York State Department of Environmental Conservation
50 Wolf Road
Albany, New York 12201

Daily - each operating day.

Weekly - every seventh day (the same day each week) and a normal operating day.

Monthly - one day each month (the same day each month) and a normal operating day. (i.e. the 2nd Tuesday of each month)

Daily Average - the total discharge by weight or in other appropriate units as specified herein, during a calendar month divided by the number of days in the month that the production or commercial facility was operating.

Daily Maximum - the total discharge by weight or in other appropriate units as specified herein, during any calendar day.

Net - the amount of a pollutant contained in the discharge measured in appropriate units as specified herein, less the amount of a pollutant contained in the surface water body intake source, measured in the same units, over the same period of time.

Composite - a combination of individual (or continuously taken) samples obtained at regular intervals over the entire discharge day. The volume of each sample shall be proportional to the discharge flow rate. For a continuous discharge, a minimum of 24 individual grab samples (at hourly intervals) shall be collected and combined to constitute a 24-hour composite sample. For intermittent discharges of 4 - 8 hours duration, grab samples shall be taken at a minimum of 30 minute intervals. For intermittent discharges of less than 4 hours duration grab samples shall be taken at a minimum of 15 minute intervals.

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Gross - the poundage contained in the discharge. (Gross applies when the intake source is a municipal or private water supply, ground water, or a surface water body other than the one being discharged to.)

Grab - An individual sample collected in less than 15 minutes.

Average (Sewage Treatment Plant Effluent)

(1) BOD₅ and Total Suspended Solids - The arithmetic mean over a 30 consecutive day period.

(2) Fecal Coliform - The geometric mean over a 30 consecutive day period.

Maximum (Sewage Treatment Plant Effluent)

(1) BOD₅ and Total Suspended Solids - The arithmetic mean over a 7 consecutive day period.

(2) Fecal Coliform - the geometric mean over a 7 consecutive day period.

NYSDEC - New York State Department of Environmental Conservation.

Area Average Approach Velocity - water velocity determined by the volumetric flow rate divided by the average area available for intake flow.

Intake Temperature - the temperature of the Hudson River intake water measured after addition of any water recirculated for deicing purposes.

Receiving Water Temperature - the temperature of the Hudson River intake water measured prior to addition of water recirculated for deicing purposes and/or water recirculated from a closed-cycle cooling system.

Net Rate of Addition of Heat (Condition 9b) - the value determined by the product of the discharge flow, heat capacity and discharge-receiving water temperature difference.

Net Rate of Addition of Heat (Condition 10(b)) - the value determined by the product of the discharge (or blowdown) flow, heat capacity and discharge (or blowdown)-receiving water temperature difference.

Continuous Monitoring of Intake and Discharge Temperature - continuous monitoring at intervals of 1 minute or less.

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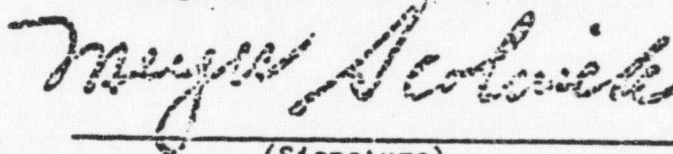
This permit and the authorization to discharge shall be binding upon the permittee and any successors in interest of the permittee and shall expire at midnight on March 30, 1980. The permittee shall not discharge after the above date of expiration. In order to receive authorization to discharge beyond the above date of expiration, the permittee shall submit such information, forms, and fees as are required by the agency authorized to issue NPDES permits no later than October 1, 1979.

By authority of _____

Gerald M. Hansler, P.E.
(Regional Administrator)

FEB 24 1975

(Date)



(Signature)

Mayer Scolnick,
Director

Enforcement and Regional
Counsel Division

JA 195

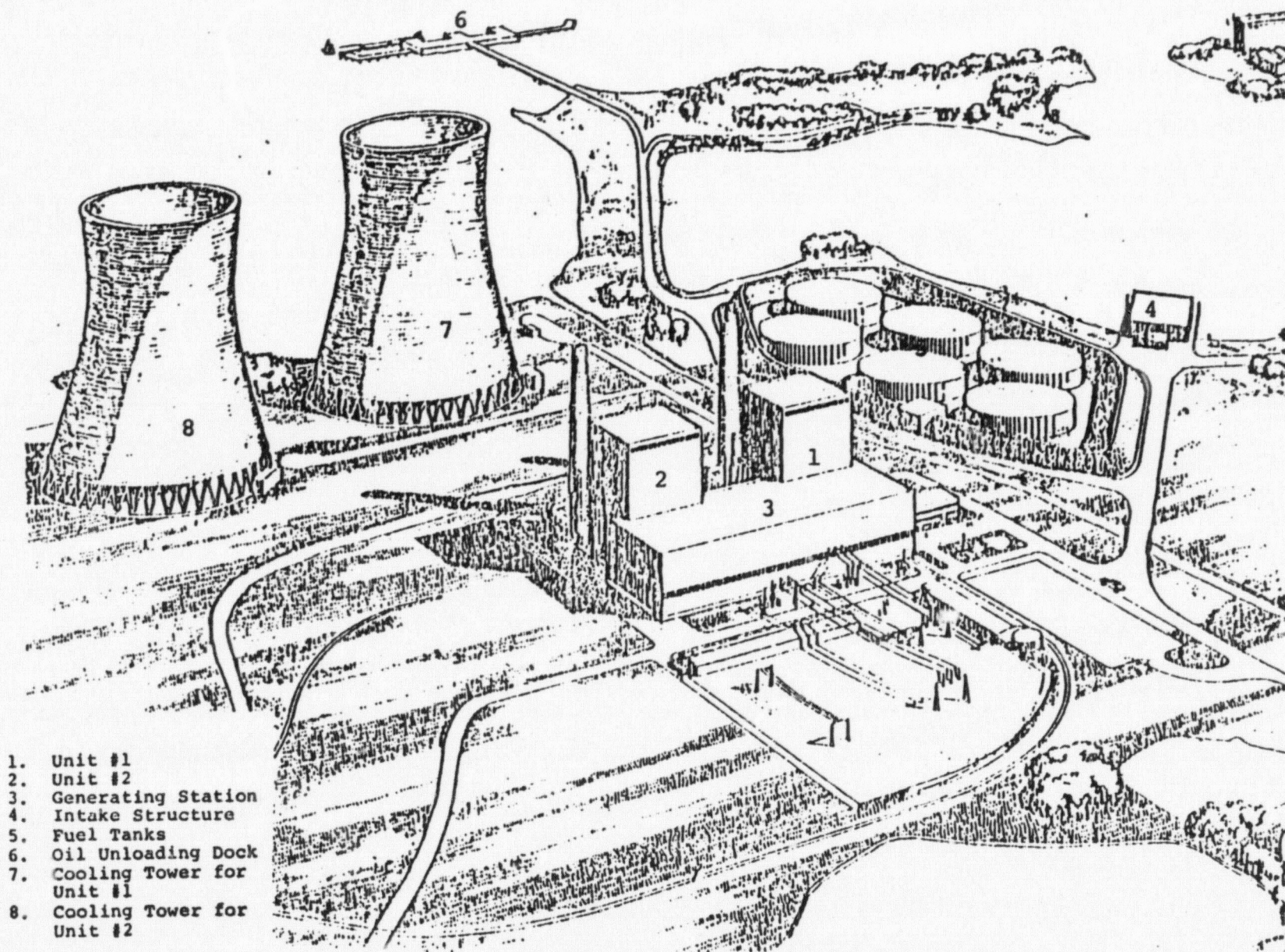
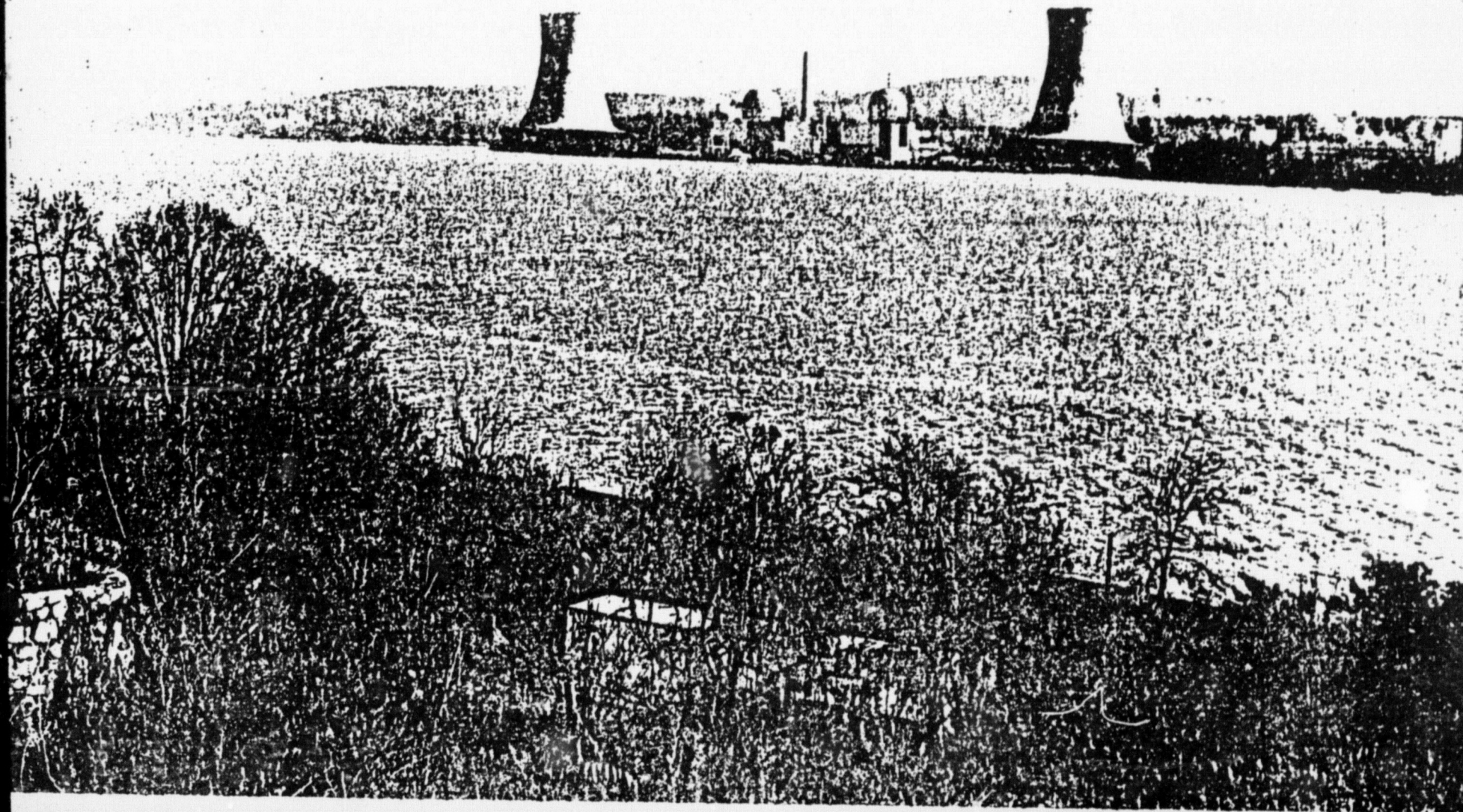


Exhibit E. Architectural rendering of natural-draft cooling towers at Bowline Point Generating Station.

Exhibit E -- View of Indian Point Units 2(L) and 3(R) from the West



JA 197

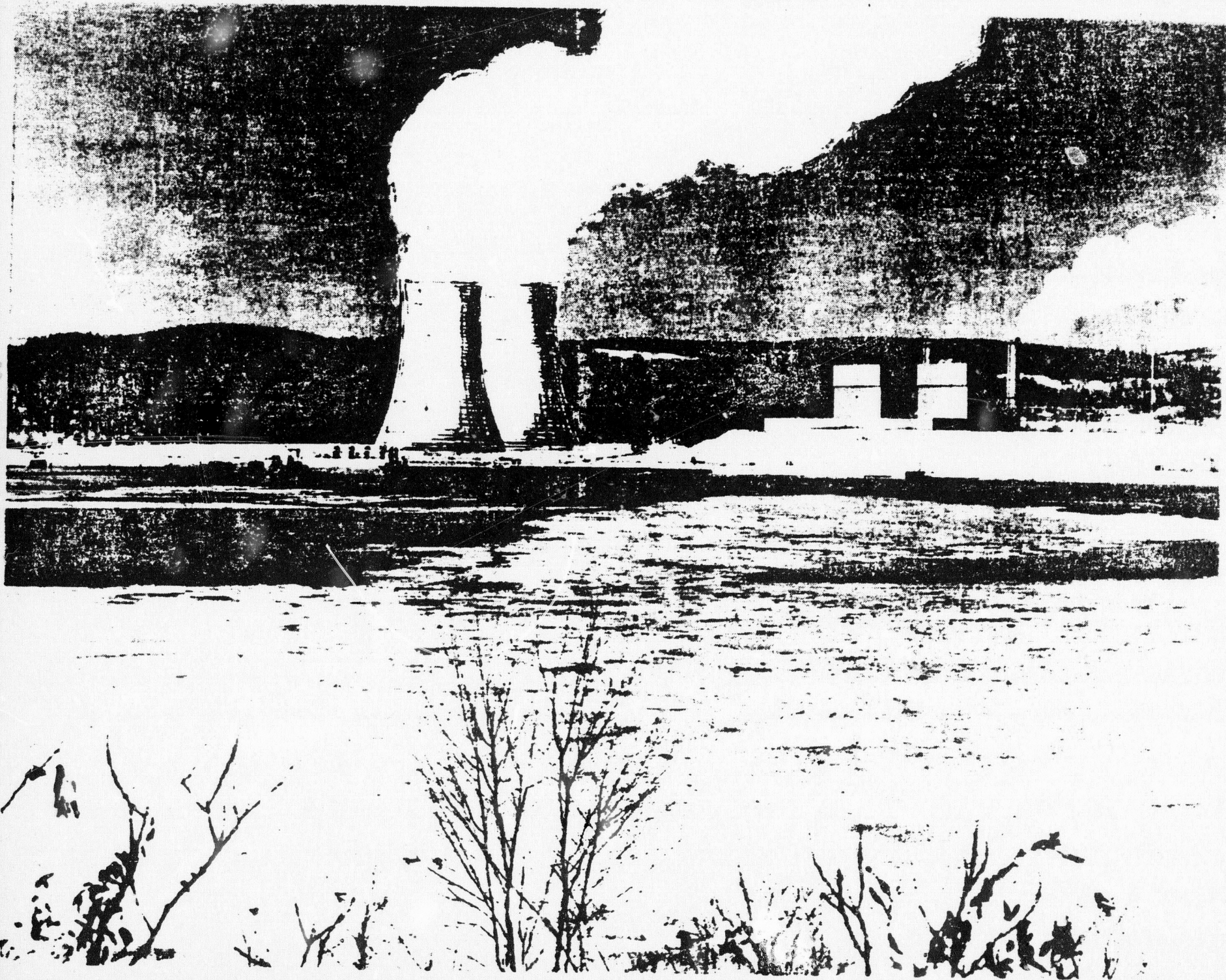
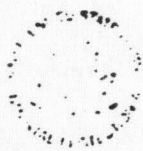


Exhibit E -- View of Roseton Generating Station from the East

JA 193



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

26 FEDERAL PLAZA

NEW YORK, NEW YORK 10007

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MAY 1 1975

Davison W. Grant, Esq.
Gould & Wilkie
Counsellors at Law
One Wall Street
New York, New York 10005

Re: Adjudicatory Hearing for
Central Hudson Gas and
Electric Corporation
Permit No.: NY COO 8262
Docket No.: II-MP-75-49 and
Permit No.: NY COO 8231
Docket No.: II-MP-75-132

Dear Mr. Grant:

The United States Environmental Protection Agency has received your letter dated March 21, 1975 containing a timely request for an Adjudicatory Hearing pursuant to the provisions of Title 40, Section 125 of the Code of Federal Regulations, as amended, 39 Federal Register 143, pp. 27079-27084 (July 24, 1974). This request concerned the National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA to the above-referenced facility. Please be advised that the request has been granted.

Enclosed please find a copy of the Public Notice of the granting of this Hearing. This Notice will be published on the date indicated thereon. This Notice details the issues you have proposed for consideration at the Hearing as well as the conditions of the issued NPDES permit which I have determined are contested. The effectiveness of these contested conditions is stayed pending final EPA action pursuant to 40 CFR 125.36.

As a result of this Public Notice procedure all parties to the Hearing will be determined. Subsequently a time and place for the Hearing will be set in consultation with all parties and the Presiding Officer.

Please be advised that the conditions of the issued permit not referenced in the Public Notice as stayed are determined to be uncontested, issued and effective. Failure to comply with the uncontested conditions of the permit will result in a violation of the permit.

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This matter has been assigned Docket No. II-WP-75-49 and II-WP-75-132. Please refer to this number in any future correspondence. In addition, please direct any future correspondence concerning this matter, in triplicate, to:

Ms. Helen Lee
Regional Hearing Clerk
Room 1009
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10007

Thank you very much for your cooperation with the NPDES program.

Sincerely yours,

Meyer Scolnick
Meyer Scolnick
Director

Enforcement and Regional Counsel Division

Enclosure

cc: Ms. Helen Lee
Regional Hearing Clerk

Malcolm Coutant, Esq.
Compliance Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12201

Thomas R. Glenn, Jr.
Director and Chief Engineer
Interstate Sanitation Commission
10 Columbus Circle
New York, New York 10019

Charles Corkin, II
Department of the Attorney General
Environmental Protection Division
131 Termon Street
Room 700
Boston, Massachusetts 02111

cc: Angus MacBeth, Esq.
Natural Resources Defense
Council, Inc.
15 West 44th Street
New York, New York 10036

Jan C. Prager, PHd.
U.S. Environmental Protection Agency
RMMQL
South Ferry Road
Narragansett, Rhode Island 02882

Mike Ludwig
National Marine Fishery Service
Northeast Region
Biological Laboratory
Millford, Connecticut 06460

Russell T. Norris
Regional Director
National Marine Fishery Service
Northeast Region
14 Elm Street
Gloucester, Massachusetts 01930

United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
212-264-2515

PUBLIC NOTICE OF ADJUDICATORY HEARING

No. NPDES 75-391 Date: MAY 9 1975

Notice is hereby given that the United States Environmental Protection Agency (EPA) has granted a request from

Davison W. Grant, Esq.
Gould & Wilkie
Counsellors at Law
One Wall Street
New York, New York 10005

for an Adjudicatory Hearing on the National Pollutant Discharge Elimination System (NPDES) permits No. NY 000 6262 (Danskammer Point Generating Station) and NY 000 8231 (Roseton Generating Station) issued under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§1251-1376 (the Act) to Central Hudson Gas & Electric Corporation, 284 South Avenue, Poughkeepsie, New York 12602. The facility covered by permit NY 000 8231 is owned by Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., and Niagara Mohawk Power Corporation as tenants-in-common.

Public Notice of EPA's intention to issue the subject NPDES permit was given on May 31, 1974, Notice No. NPDES 74-944 for permit No. NY 000 8231, and on June 21, 1974, Notice No. NPDES 74-1002 for permit No. NY 000 6262.

The following is a brief description of the permittee's activities for NPDES permit No. NJ 000 6262.

The Danskammer Point Generating Station has four units with a total nameplate capacity of 532 MWe. All boilers at the facility are oil-fired. There are presently 8 discharges (004, 008-010, 015, 017 and a sewage treatment plant discharge) from the facility. In addition, the permittee is constructing a waste treatment facility, which is expected to commence operations by April or May, 1974. The proposed effluent from the treatment plant, which will have an average flow of 0.6 MGD, will be discharged through a separate discharge pipe (Discharge 014). Wastes which will be treated include boiler blowdown, ion exchanger wastes, clarifier blowdown, evaporator blowdown, ash pit seals and overflow water, floor drains effluent, ash hopper wash, boiler fireside wash, air preheater wash and boiler chemical cleaning wastes. Discharges 009, 009 and 010 contain mostly condenser cooling water with smaller amounts of service cooling water. The total maximum flow of Discharges 008-010 is 499 MGD. Discharges 004, 015 and 017 contain intake screen backwash water and have a total maximum flow of 2.5 MGD. Discharge 016, which contains service cooling water and sand filter backwash (0.04 MGD), has a maximum flow of 0.5 MGD. The plant also has a sewage treatment plant with an average discharge of 4,000 gpd.

All effluents are discharged into the Hudson River at points approximately 1500 feet upstream to 100 feet downstream of Soap Hill Road. The Hudson River at the points of discharge, has a New York State Classification of Class C. The best usages of such waters are stated to be fishing and any other usages except as source of water supply for drinking, culinary or food processing purposes.

The following is a brief description of the permittee's activities for NPDES permit No. NY 000 8231.

The Roseton Generating Station has 2 units with a total name-plate capacity of 1200 MWe (600 MWe each). All boilers at the facility will be oil-fired. There will be five discharges from the facility (001-004 and sewage treatment plant effluent). Discharge 001, which will contain travelling screen backwash, will have a maximum flow of 2.4 MGD. Discharge 002, which will contain condenser cooling water and auxiliary cooling water, will have a maximum flow of 945 MGD. Discharge 003 results from storm drainage from various plant areas. No discharge is expected from the oil storage area which is enclosed by a berm. Oil separators and traps will treat storm drainage prior to discharge. Discharge 004 will be the effluent from a waste treatment facility, which will treat all contaminated wastes, including boiler blowdown, demineralizer regeneration, air heater wash, boiler fire-side wash, dust collector wash and boiler chemical cleaning wastes. Treatment will consist of sedimentation, coagulation, flocculation, neutralization and oil separation. Discharge 004 will have a average flow of 390,000 gallons per day. In addition to Discharges 001-004, the plant presently has a discharge of 21,600 gallons per day from a sewage treatment plant.

All effluents are discharged along the west bank of the Hudson River, except for Discharge 004, which is discharged to an unnamed stream approximately 500 feet upstream from the confluence with the Hudson River. Discharge 002 is a submerged multiport diffuser. The diffuser is oriented parallel to the longitudinal river axis, with 14 ports discharging perpendicular to the river flow. All discharges are located approximately 3.5-4 miles north of the Newburgh Bridge. The Hudson River at the points of discharge has a New York State classification of Class C. The best usages of such waters are stated to be fishing and any other usages except as source of water supply for drinking, culinary or food processing purposes.

The following issues have been raised by the requester of the Adjudicatory Hearing for permit No. NY 000 6262:

- (1) Whether Condition 9.b.(1) at page 24 of 26 pages should be deleted on the basis of 40 CFR §§423.31-423.33?
- (2) Whether Condition 9.c. at page 6 of 26 pages should be deleted because §316(b) of the Act does not apply to the Danskammer plant or because the permittee is exempt from §316(b) under 40 CFR Part 423?
- (3) Whether Condition 10.b(2) at page 8 of 26 pages and Condition 10.c.(1) at page 9 of 26 pages should either be deleted or modified so as to refer to Water Quality Standards rather than effluent limitations?
- (4) Whether Condition 10.c(3) at page 9 of 26 pages should be deleted because limits contained therein were imposed as Water Quality Standards without following the procedures set forth in §302 of the Act?
- (5) Whether Condition 11 at pages 10-13 of 26 pages should be revised to provide a more reasonable time for compliance and submittal of required data, and to provide for construction delays beyond the permittee's control?
- (6) Whether the asterisked provision of Condition 12 at page 14 of 26 pages should be eliminated?
- (7) Whether Condition 12.c(1) at page 16 of 26 pages should be modified to substitute an impingement sampling protocol which will provide statistically reliable samples while avoiding unnecessary measurement?
- (8) Whether the submission date for the monitoring report required by Condition 12.c.(3) at page 16 of 26 pages should be changed from February 15 to June 1?
- (9) Whether reports of triaxial isothermal measurements required by Condition 12.c(4) at page 17 of 26 pages should be submitted 50 days after completion of the survey?
- (10) Whether Condition 13 at page 21 of 26 pages should be amended to allow return to the river of all impinged fish and non-separable solids, and whether Condition 13(b) should be deleted?

The following issues have been raised by the requestor of the Adjudicatory Hearing for permit No. NY 000 8231:

- (1) Whether the issuance of a Public Notice of Draft Permit requiring submittal of information in support of a request for alternative effluent limitations pursuant to §316(a) of the Act within 60 days of such Notice denied the permittee a reasonable opportunity to make a §316(a) demonstration in light of the fact that the Roseton Generating Station had not yet begun operation?
- (2) Whether the Regional Administrator should defer his §316(a) determination to allow the permittee additional time in which to conduct further studies?
- (3) Whether closed-cycle cooling based on §316(b) of the Act was imposed improperly, or in the alternative, whether imposition of closed-cycle cooling pursuant to §316(b) of the Act should be deferred until final §316(b) regulations are promulgated?
- (4) Whether EPA's denial of the permittee's §316(a) request was based upon inadequate analysis of data submitted by the permittee?
- (5) Whether numerical thermal limitations in Condition 9.b.(1)(a) at page 4 of 23 pages should be deleted?
- (6) Whether Condition 9.b.(1)(b) at page 5 of 23 pages and Condition 10.(a)(3) at page 8 of 23 pages should be amended to delete those thermal limitations based on New York State Water Quality Standards?
- (7) Whether Condition 10(b)(2) at page 8 of 23 pages should be deleted?
- (8) Whether Condition 11(b) at page 11 of 23 pages should be amended to provide for construction delays beyond the control of the permittee?
- (9) Whether Condition 12(b)(4) at page 14 of 23 pages should be amended to require submission of triaxial isothermal measurement reports 50 rather than 20 days after the end of the month in which the measurement is made?
- (10) Whether the asterisked provision of Condition 12 at page 13 of 23 pages should be deleted?
- (11) Whether Condition 13 at page 18 of 23 pages should be amended to allow return to the river of all impinged fish and non-separable solids, and whether Condition 13(b) should be deleted?

Pending the completion of the Adjudicatory Hearing process, the effectiveness of the following conditions to the issued NPDES permit is stayed for permit No. NY 000 6262.

- (1) Condition 9.b.(1).
- (2) Condition 9.c.
- (3) Condition 10.b.(2).
- (4) Condition 10.c.(3).
- (5) Condition 11 as it relates to specific dates for attaining operational levels, achieving interim goals, and making submissions to EPA or the State agency.
- (6) The asterisked provision of Condition 12.a.
- (7) Condition 12.c.(1) as it relates to impingement sampling protocol.
- (8) Condition 12.c.(3) as it relates to the date of submission of the monitoring report.
- (9) Condition 10.c.(4) as it relates to the date of submission of the triaxial isothermal measurement survey results.
- (10) Condition 13 as it relates to the disposition of impinged fish and non-separable solids.
- (11) Condition 13(b).

Pending the completion of the Adjudicatory Hearing process, the effectiveness of the following conditions to the issued NPDES permit is stayed for permit No. NY 000 8231.

- (1) Condition 9.b.(1)(a).
- (2) Condition 9.b.(1)(b) and Condition 10.a.(3) in as far as they are based upon New York State Water Quality Standards.
- (3) Condition 10(b)(2).
- (4) Condition 11(b) as it relates to specific dates for attaining operational levels or achieving interim goals..
- (5) Condition 12(b)(4) as it relates to the date of submission of the triaxial isothermal measurement survey results.
- (6) The asterisked provision of condition 12.a.
- (7) Condition 13 as it relates to disposition of impinged fish and non-separable solids.

The Adjudicatory Hearing shall be conducted pursuant to the procedures set forth under 40 Code of Federal Regulations, Section 125.36, as amended, by 39 Federal Register 143, pp.27079-27084 (July 24, 1974). The following rules with regard to the entire Adjudicatory Hearing process shall be followed:

A. Any interested person may file with the Regional Hearing Clerk a request to be admitted as a party to the hearing. Such a request must be filed by JUN 9 1975

B. Any party may at any time prior to the hearing submit any documents or written evidence or testimony which he intends to introduce at the hearing;

C. No sooner than thirty (30) days following the date of this notice, the Presiding Officer may set a time and location of a pre-hearing conference and will so notify all parties;

D. The permit may be amended by the Regional Administrator prior to or after the Adjudicatory Hearing and any person interested in the particular proposed permit must request to be a party in order to preserve any right to appeal the final administrative determination;

E. Parties may be represented by counsel or other duly authorized representatives.

F. Any State with certification rights under Section 1341 of the Act must certify or deny certification within thirty (30) days after it is notified that a permit has been amended after a request for an Adjudicatory Hearing has been granted. Failure to certify or deny certification shall be deemed a waiver of such certification rights.

A request to be admitted as an additional party for this hearing shall set forth all material issues of fact the requestor seeks to be considered at the Adjudicatory Hearing (whether such issues are noticed herein or are in addition thereto) and shall:

- (i) State the name and address of the person making such request;
- (ii) Identify the interest of the requestor which is affected by the proposed issuance of the permit contained in the determination of the Regional Administrator;
- (iii) Identify any persons whom the requestor represents;
- (iv) Include an agreement by the requestor to be subject to examination and cross-examination and to make any employee or consultant of such requestor or other person represented by the requestor available for examination and cross-examination at the expense of such requestor or such other person upon the request of the Presiding Officer, on his own motion, or on the motion of any party;
- (v) State with particularity the reasons for the request;
- (vi) State with particularity the issues proposed to be considered at the hearing; and
- (vii) Include proposed terms and conditions which, in the judgment of the requestor, would be required to carry out the intentment of the Act.

An original and two (2) copies of all documents or papers required or authorized to be filed shall be filed with the Regional Hearing Clerk.

Except for requests to be a party, at the same time that a party files with the Regional Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials proposed to be introduced into evidence, it shall serve upon all other parties copies thereof. A certification of service shall be provided on or accompany each document or paper filed with the Regional Hearing Clerk.

The address and phone number of the Regional Hearing Clerk follows:

Ms. Helen Lee
U. S. Environmental Protection Agency
Region II
Room 1009
26 Federal Plaza
New York, New York 10007
(212) 264-9887

The following address and phone number is supplied for any interested person to use for contact with the EPA for matters concerning the procedures to be followed in the conduct of the Adjudicatory Hearing:

Henry Gluckstern, Esq.
U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
(212) 264-4430

Copies of the permit and a fact sheet (if any) may be obtained from the Status of Compliance Branch, EPA, Region II, at the above address, either by mail, by calling 212-264-9881 or by coming in person between 8:00 a.m. and 4:30 p.m. Monday through Friday. Other forms and documents relating to the permit may be inspected at the office of the Status of Compliance Branch. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

JUN 6 1975

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

LeBoeuf, Lamb, Leiby & MacRae
Attorneys at Law
140 Broadway
New York, New York 10005

ATTN: G.S. Peter Bergen, Esq.

Re: Adjudicatory Hearing for
Orange and Rockland Utilities, Inc.
Permit No.: NY 000 8010
Docket No.: II-WP-74-134

Dear Mr. Bergen:

The United States Environmental Protection Agency has received your letter dated March 14, 1975 containing a timely request for an Adjudicatory Hearing pursuant to the provisions of Title 40, Section 125 of the Code of Federal Regulations, as amended, 39 Federal Register 143, pp. 27079-27084 (July 24, 1974). This request concerned the National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA to the above-referenced facility. Please be advised that the request has been granted.

Enclosed please find a copy of the Public Notice of the granting of this Hearing. This Notice will be published on the date indicated thereon. This Notice details the issues you have proposed for consideration at the Hearing as well as the conditions of the issued NPDES permit which I have determined are contested. The effectiveness of these contested conditions is stayed pending final EPA action pursuant to 40 CFR 125.36.

As a result of this Public Notice procedure all parties to the Hearing will be determined. Subsequently a time and place for the Hearing will be set in consultation with all parties and the Presiding Officer.

Please be advised that the conditions of the issued permit not referenced in the Public Notice as stayed are determined to be uncontested, issued and effective. Failure to comply with the uncontested conditions of the permit will result in a violation of the permit.

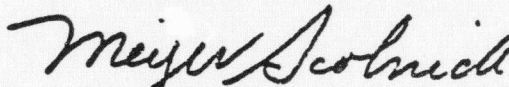
-2-

This matter has been assigned Docket No. II-WP-74-134. Please refer to this number in any future correspondence. In addition, please direct any future correspondence concerning this matter, in triplicate, to:

Ms. Helen Lee
Regional Hearing Clerk
Room 1009
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10007

Thank you very much for your cooperation with the NPDES program.

Sincerely yours,



Meyer Scolnick
Director

Enforcement and Regional Counsel Division

Enclosure

cc: Ms. Helen Lee
Regional Hearing Clerk

Malcolm Coutant, Esq.
Compliance Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12201

Angus MacBeth, Esq.
Natural Resources Defense Council, Inc.
15 West 44th Street
New York, New York 10036

United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
212-264-2515

JA 213

PUBLIC NOTICE OF ADJUDICATORY HEARING

No. NPDES 75-441

Date: JUN 20 1975

Notice is hereby given that the United States Environmental Protection Agency (EPA) has granted a request from

Orange and Rockland Utilities
75 West Route 59
Sprin Valley, New York 10977

for an Adjudicatory Hearing on the National Pollutant Discharge Elimination System (NPDES) permit (No. NY 000 8010) issued under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S. Code §§1251-1376 (the Act) for

Orange and Rockland Utilities
Bowline Point Generating Station
West Haverstraw, New York

Public Notice of EPA's intention to issue the subject NPDES permit was given on May 31, 1974, Notice No. NPDES 74-948.

The following is a brief description of the permittee's activities.

The permittee's Bowline Point Generating Station has two Units operating, each with a maximum capacity of 621 megawatts-electric. There are four discharges resulting from the operations of the facility. Discharges 001 and 002 principally consist of condenser cooling water, with contributions from demineralizer pre-filter backwash, service water, strainer backwash, air preheater wash-down and boiler blowdown. Discharges 001 and 002 have a maximum flow of 384,000 gallons per minute each and enter the Hudson River through a submerged diffuser. Discharge 003 is an infrequent discharge which occurs only during rainfall; it consists of storm drainage from the fuel storage area and has maximum flow of 200 gallons per minute and is discharged into the Minisceongo Creek. Discharge 004 consists entirely of travelling screen backwash and has a maximum flow of 2400 gallons per minute; the discharge goes into a pond owned by the permittee. Discharges 001 and 002 are located approximately 400 feet east of Bowline Point and 1600 feet north of the Inlet Channel. Discharge 003 is located approximately 800 feet from the confluence of Minisceongo Creek and the Hudson River. Discharge 004 is located approximately 1200 feet west of Bowline Point and 1300 feet north of the Inlet Channel.

The following issues have been raised by the requestor of the Adjudicatory Hearing.

- (1) Whether the provisions of Condition 10(a) of the permit, which require installation of cooling towers at the Bowline Point Generating Station, should be deleted from the permit, and whether the initial thermal effluent limitations set forth in Conditions 9(b)(1)(a), (b) and (c), should be allowed to remain in effect as permanent alternative effluent limitations for the Bowline Station for the duration of the permit? Conditions 9(b)(1)(a), (b) and (c) impose limitations which reflect the current operating procedures at the facility.
- (2) Whether EPA's Effluent Limitation Guidelines were improperly applied to the Bowline Generating Station?
- (3) Whether the final thermal effluent limitations contained in paragraph 10(a) are more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the Hudson River, so that permittee should be entitled to a waiver under §316(a) of the Act?
- (4) Whether EPA properly determined that the limitations of Conditions 10(a) (1) and (2) would be required at the Bowline Station, by §316(a) of the Act?
- ✓ (5) Whether the maximum discharge temperature limitation set forth in Condition 9(b)(1)(a) and the maximum allowable discharge-intake temperature differential set forth in Condition 9(b)(1)(b) should be deleted from the permit, or, in the alternative, whether these effluent limitations should be revised so as to indicate that they reflect daily average values, rather than instantaneous values?
- (6) Whether the provisions of Condition 10(a)(2)(b) which restrict the net rate of heat addition on the assumption that cooling towers would be installed, should be modified?
- ✓ (7) Should Conditions 9(b)(5), (6), (7) and 10(a)(3) and (4) which presently require certain state water quality standards to be adhered to as effluent limitations, be revised so as to state that "the discharge shall be limited so as to allow for achievement of these standards for the receiving waters"?
- (8) Should Conditions 9(b)(5), (6) and (7), and 10(a)(3) and (4) be revised, since they present limitations more stringent than those otherwise required by EPA's effluent limitation guidelines, and were not imposed pursuant to §302 of the Act, since no public hearing was noticed or held by the Administrator?

(9) Whether Condition 9(b)(1)(d), which presently restricts free available chlorine concentrations to a maximum of 0.2 mg/l during chlorination periods, be revised to permit, as a maximum, up to 0.5 mg/l free available chlorine during chlorination periods? JA 219

(10) Whether the prohibition contained in Condition 9(b)(1)(d) against chlorination where temperature is below 50°F should be deleted?

(11) Whether Condition 9(b)(1)(d) should be revised so as to allow a maximum total available chlorine dosage of 76.8 lbs/day, rather than 48.5 lbs/day?

(12) Whether the pH limitation contained in Condition 9(b)(1)(e) on circulating cooling water should be deleted?

(13) Whether the Schedule of Compliance contained in Condition 11 should be revised to reflect the modification of the permit as hereinabove noticed?

(14) Assuming that cooling towers shall be required by the permit after resolution of the issues hereinabove noticed, whether said Schedule of Compliance should be revised so as to:

(a) require that preliminary, rather than final plans and specifications be submitted to the State and EPA by June 1, 1977.

(b) adjust the dates for completing construction and achieving the final permit limits so that every generating plant in the state required to install cooling towers is not required to do so during the same time interval?

(15) Should the Schedule of Compliance be further revised so as to include the following provision:

"The date or dates set forth in this Compliance Schedule shall be deemed to be extended by an amount of time equivalent to any delay or inability of the permittee to proceed with construction, incurred in good faith, resulting from failure of local, state, or federal agencies to issue construction permits, building permits or other authorizations required by local, state or federal laws, ordinances or regulations. In addition, the Administrator will extend the dates of this Compliance Schedule where the permittee is unable to proceed or incurs delay because of strikes, failure of suppliers, acts of God, prohibition by judicial or governmental order, or other matters beyond its control".

(16) Whether Condition 11, which presently requires that reports of tri-axial temperature measurements be submitted within 20 days after the month the survey is conducted, should be revised to require the report six weeks after the studies are concluded?

(17) Whether Condition 12(h), which presently requires submittal of monthly monitoring reports, be revised so as to allow submittal of monitoring results on a quarterly basis?

(18) Whether Condition 9(a)(8) of the permit, which relates to the Corps of Engineers maintenance dredging program, and the permittee's possible responsibilities thereunder, should be deleted?

Pending the completion of the Adjudicatory Hearing process the effectiveness of the following conditions to the issued NPDES permit is stayed.

(1) Condition 10(a), which imposes final thermal effluent limitations.

(2) Condition 9(b)(1)(a), which imposes an interim maximum discharge temperature.

(3) Condition 9(b)(1)(b), which establishes a maximum allowable discharge-intake temperature differential.

(4) Conditions 9(b)(5), (6), and (7), and Conditions 10(a)(3) and (4), which relate to state water quality standards.

(5) Condition 9(b)(1)(d), which imposes certain limitations on permittee's discharge of chlorine.

(6) Condition 9(b)(1)(e), which imposes certain limitations on the pH parameter of the permittee's discharge.

(7) Condition 11, the Schedule of Compliance.

(8) The reporting requirements of Conditions 12(c)(1) and 12(h).

(9) Condition 9(b)(8), which relates to the Corps of Engineers maintenance dredging program.

The Adjudicatory Hearing shall be conducted pursuant to the procedures set forth under 40 Code of Federal Regulations, Section 125.36, as amended, by 39 Federal Register 143, pp.27079-27084 (July 24, 1974). The following rules with regard to the entire Adjudicatory Hearing process shall be followed:

A. Any interested person may file with the Regional Hearing Clerk a request to be admitted as a party to the hearing. Such a request must be filed by JUL 21 1975

B. Any party may at any time prior to the hearing submit any documents or written evidence or testimony which he intends to introduce at the hearing;

C. No sooner than thirty (30) days following the date of this notice, the Presiding Officer may set a time and location of a pre-hearing conference and will so notify all parties;

D. The permit may be amended by the Regional Administrator prior to or after the Adjudicatory Hearing and any person interested in the particular proposed permit must request to be a party in order to preserve any right to appeal the final administrative determination;

E. Parties may be represented by counsel or other duly authorized representatives.

F. Any State with certification rights under Section 1341 of the Act must certify or deny certification within thirty (30) days after it is notified that a permit has been amended after a request for an Adjudicatory Hearing has been granted. Failure to certify or deny certification shall be deemed a waiver of such certification rights.

A request to be admitted as an additional party for this hearing shall set forth all material issues of fact the requestor seeks to be considered at the Adjudicatory Hearing (whether such issues are noticed herein or are in addition thereto) and shall:

- (i) State the name and address of the person making such request;
- (ii) Identify the interest of the requestor which is affected by the proposed issuance of the permit contained in the determination of the Regional Administrator;
- (iii) Identify any persons whom the requestor represents;
- (iv) Include an agreement by the requestor to be subject to examination and cross-examination and to make any employee or consultant of such requestor or other person represented by the requestor available for examination and cross-examination at the expense of such requestor or such other person upon the request of the Presiding Officer, on his own motion, or on the motion of any party;
- (v) State with particularity the reasons for the request;
- (vi) State with particularity the issues proposed to be considered at the hearing; and
- (vii) Include proposed terms and conditions which, in the judgment of the requestor, would be required to carry out the intentment of the Act.

An original and two (2) copies of all documents or papers required or authorized to be filed shall be filed with the Regional Hearing Clerk.

Except for requests to be a party, at the same time that a party files with the Regional Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials proposed to be introduced into evidence, it shall serve upon all other parties copies thereof. A certification of service shall be provided on or accompany each document or paper filed with the Regional Hearing Clerk.

The address and phone number of the Regional Hearing Clerk follows:

Ms. Helen Lee
U. S. Environmental Protection Agency
Region II
Room 1009
26 Federal Plaza
New York, New York 10007
(212) 264-9887

The following address and phone number is supplied for any interested person to use for contact with the EPA for matters concerning the procedures to be followed in the conduct of the Adjudicatory Hearing:

J. Kevin Healy, Esq.
U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
(212) 264-4877

Copies of the permit and a fact sheet (if any) may be obtained from the Status of Compliance Branch, EPA, Region II, at the above address, either by mail, by calling 212-264-9881 or by coming in person between 8:30 a.m. and 4:30 p.m. Monday through Friday. Other forms and documents relating to the permit may be inspected at the office of the Status of Compliance Branch. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Exhibit H



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10007

JA 226

RECEIVED

MAY 8 1975

(5)
C. L. NEWMAN

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

MAY 8 1975

Carl L. Newman
Vice President, Engineering
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, New York 10003

Re: Adjudicatory Hearing
Permit No.: NY 000 4472
Docket No.: II-WP-75-65

Dear Mr. Newman:

The United States Environmental Protection Agency has received your letter dated April 7, 1975 containing a timely request for an Adjudicatory Hearing pursuant to the provisions of Title 40, Section 125 of the Code of Federal Regulations, as amended, 39 Federal Register 143, pp. 27079-27084 (July 24, 1974). This request concerned the National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA to the above-referenced facility. Please be advised that the request has been granted.

Enclosed please find a copy of the Public Notice of the granting of this Hearing. This Notice will be published on the date indicated thereon. This Notice details the issues you have proposed for consideration at the Hearing as well as the conditions of the issued NPDES permit which I have determined are contested. The effectiveness of these contested conditions is stayed pending final EPA action pursuant to 40 CFR 125.36.

As a result of this Public Notice procedure all parties to the Hearing will be determined. Subsequently a time and place for the Hearing will be set in consultation with all parties and the Presiding Officer.

Please be advised that the conditions of the issued permit not referenced in the Public Notice as stayed are determined to be uncontested, issued and effective. Failure to comply with the uncontested conditions of the permit will result in a violation of the permit.

This matter has been assigned Docket No. II-WP-75-65. Please refer to this number in any future correspondence. In addition, please direct any future correspondence concerning this matter, in triplicate, to:

Ms. Helen Lee
Regional Hearing Clerk
Room 1009
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10007

Thank you very much for your cooperation with the NPDES program.

Sincerely yours,



Meyer Scolnick
Director

Enforcement and Regional Counsel Division

Enclosure

cc: Ms. Helen Lee
Regional Hearing Clerk

Malcolm Coutant, Esq.
Compliance Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12201

Angus MacBeth, Esq.
Natural Resources Defense Council, Inc.
15 West 44th Street
New York, New York 10036

Office of City Manager
City of Peekskill
City Hall
Peekskill, New York 10566

United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
212-264-2515

PUBLIC NOTICE OF ADJUDICATORY HEARING

No. NPDES 75 - 406

Date: MAY 16 1975

Notice is hereby given that the United States Environmental Protection Agency (EPA) has granted a request from

Carl L. Newman
Vice President, Engineering
Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003

for an Adjudicatory Hearing on the National Pollutant Discharge Elimination System (NPDES) permit (No. NY 000 4472) issued under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S. Code §§1251-1376 (the Act) to the Consolidated Edison Company of New York, Inc., at the above address, for its Indian Point Generating Station, Units 1 and 2.

Public Notice of EPA's intention to issue the subject NPDES permit was given on June 28, 1974,
Notice No. NPDES 74-1111.

The following is a brief description of the permittee's activities.

The permittee's Indian Point Generating Station, Units 1 and 2, have a total nameplate capacity of 1148 MWe (275 MWe for Unit 1 and 873 MWe for Unit 2). Unit 1 is as a combined nuclear and oil-fired generating plant; Unit 2 is a nuclear generating plant. Both units have pressurized water nuclear reactors which use uranium dioxide as fuel; Unit 1 also has an oil-fired superheater.

There are five discharges resulting from the operation of Units 1 and 2. Discharge 001 is a common discharge for both units, the effluents of which enter the receiving waters through a submerged multiport diffuser. The discharge has a maximum flow of 1,189,000 gallons per minute, of which 1,120,000 gallons per minute is condenser cooling water, 68,000 gallons per minute is service cooling water, and the remainder is boiler and steam generator blowdown, evaporator blowdown, ion exchanger regeneration wastes, radioactive liquid wastes, etc. Discharges 005 and 006 result from the washing of the intake travelling screens of Units 1 and 2, respectively. Coarse debris removed from the intake screens is disposed of in a local refuse dump. Fish and non-separable solid material are returned to the Hudson River via a fish return line. Discharges 002 and 003, which do not utilize fish return lines, are used only when Discharges 005 and 006, respectively, are not operational. The total maximum flow of the intake screen backwash discharges is approximately 720,000 gallons per day. In addition to these 5 discharges, as part of the discharge permit application for Indian Point Generating Station, Units 1 and 2, the applicant has included an intake screen backwash discharge (Discharge 004) from the Unit 3 intake. This discharge has not been considered in the Draft Permit for Units 1 and 2, and will require a separate permit.

All effluents are discharged into the Hudson River at points approximately 5 miles downstream from the Bear Mountain Bridge. The Hudson River at the points of discharge has a New York State water quality classification of Class SB, for which the best usage is defined as bathing and any other usages, except shellfishing for market purposes.

The following issues have been raised by the requestor of the Adjudicatory Hearing:

- (1) Whether Condition 9.b.(1)(a) at page 4 of 23 pages should be deleted or, in the alternative, whether Condition 9.b.(1)(a)(2) and 9.b.(1)(a)(3) should be revised to allow a net rate of addition of heat of 8.7×10^9 BTU/hr.?
- (2) Whether Condition 9.b.(1)(c) at page 5 of 23 pages should be deleted as an improper imposition of State Water Quality Standards?
- (3) Whether the phrase "site river water temperature" in Condition 9.b.(2)(a) at page 5 of 23 pages should be changed to "intake temperature"?
- (4) Whether the discharge limitations for Boron in Condition 9.b.(3) at page 5 of 23 pages should be changed from 13.7 kg/day (30 lb/day) average and 27.3 kg/day (60 lb/day) maximum to 22.7 kg/day (50 lb/day) average and 45.4 kg/day (100 lb/day) maximum, and whether a daily maximum of 600 lb/day should be allowed in the case of a system malfunction?
- (5) Whether Condition 9.b.(4) at page 5 of 23 pages should be deleted as a reference to §311 of the Act unauthorized by §402 of the Act?
- (6) Whether the requirement in Condition 9.b.(5)(b) at page 6 of 23 pages of an average velocity of 10 ft/sec at the vena contracta of the discharge ports is necessary to meet State Water Quality Standards?
- (7) Whether the compliance date in Condition 9.c.(1) at page 6 of 23 pages should be changed from July 1, 1975 to January 1, 1977 to allow completion of intake system impact studies currently in progress?
- (8) Whether the compliance date in Condition 10.a. at page 7 of 23 pages should be changed from July 1, 1977 to May 1, 1978 to allow coordination of waste treatment among all the permittee's generating stations?
- (9)
 - (a) Whether "best available technology" as specified in the Final Effluent Guidelines for the Steam Electric Generating Point Source Category is inapplicable to Unit 2 of the Indian Point Station because Unit 2 is fundamentally different from the "average" steam electric station contemplated by the Guidelines?
 - (b) Whether Unit 2 should be exempted from application of the "best available technology" requirement of closed-cycle cooling specified in the Final Effluent Guidelines for the Steam Electric Generating Point Source Category on the basis of land unavailability?

- (c) Whether the permittee may be required to meet the best available technology limitations prior to July 1, 1981?
- (d) Whether the limitations in Condition 10(b)(1) at page 7 of 23 pages are more stringent than necessary to assure the protection of a balanced indigenous population of shellfish, fish and wildlife in and on the Hudson River?
- (e) Whether the Regional Administrator should defer his final determination with respect to the permittee's §316(a) request until identification of the "deficiencies" in the permittee's prior submittal and submittal of any necessary additional information?
- (f) Whether EPA may legally impose closed-cycle cooling as a technological consequence of application of §316(b) of the Act?
- (g) Whether "best technology" for intake structures limits EPA to requiring modification of the intake structure to carry out the requirements of §316(b) of the Act?
- (h) Whether the language of §316(b) of the Act requires a site-specific cost-benefit analysis and/or an evaluation of the aquatic ecosystem effects of intake structure operation prior to imposition of closed-cycle cooling?
- (10) Whether the compliance schedule in Condition 11.a at page 8 of 23 page and Condition 11.b. at page 9 of 23 pages should be amended to provide for delays encountered awaiting approvals by EPA or other federal, state, or local agencies or due to equipment delivery or installation delays not caused by the permittee?
- (11) (a) Whether the compliance schedule in Condition 11.b. at page 9 of 23 pages should be deleted or delayed pending a final determination with respect to the permittee's §316(a) request, and/or revised to require compliance with Condition 10(b) limitations by July 1, 1981?
- (b) Whether Condition 11.b.(b) should be revised to require preliminary rather than final plans and specifications?
- (12) Whether the compliance date in Condition 12(a) at page 10 of 23 pages should be changed from August 1, 1975 to January 1, 1976?
- (13) Whether the 30 consecutive day monitoring requirement in Condition 12(a)(2) at page 10 of 23 pages should be made less stringent?
- (14) Whether Condition 12(c)(1) at page 13 of 23 pages should be deleted?
- (15) Whether Condition 12(c)(2) at page 13 of 23 pages should be replaced with the permittee's proposed impingement monitoring protocol?

(16) Whether the reporting frequency in Condition 12(h) at page 17 of 23 pages should be changed from "monthly" to "quarterly"?

(17) Whether Condition 13 at page 18 of 23 pages should be revised to allow discharge of all fish rather than only live fish, collected on the intake screens?

Pending the completion of the Adjudicatory Hearing process the effectiveness of the following conditions to the issued NPDES permit is stayed.

- (1) Condition 9.b.(1)(a).
- (2) Condition 9.b.(1)(c).
- (3) Condition 9.b.(2)(a) as it relates to the 0.55 ft/sec limitation.
- (4) Condition 9.b.(3) as it relates to the limitation for Boron.
- (5) Condition 9.b.(4).
- (6) Condition 9.b.(5)(b).
- (7) Condition 9.c.(1) as it relates to the specific compliance date.
- (8) Condition 10.a. as it relates to the specific compliance date.
- (9) Condition 10.(b)(1) and 10(b)(2).
- (10) Condition 11.a. as it relates to attainment of specific compliance dates.
- (11) Condition 11.b.
- (12) Condition 12(a) as it relates to the specific compliance date.
- (13) Condition 12(a)(2) as it relates to the number of days measurement.
- (14) Condition 12(c)(1).
- (15) Condition 12(c)(2).
- (16) Condition 12(h) as it relates to reporting frequency.
- (17) Condition 13.

The Adjudicatory Hearing shall be conducted pursuant to the procedures set forth under 40 Code of Federal Regulations, Section 125.36, as amended, by 39 Federal Register 143, pp.27079-27084 (July 24, 1974). The following rules with regard to the entire Adjudicatory Hearing process shall be followed:

A. Any interested person may file with the Regional Hearing Clerk a request to be admitted as a party to the hearing. Such a request must be filed by JUN 16 1975

B. Any party may at any time prior to the hearing submit any documents or written evidence or testimony which he intends to introduce at the hearing;

C. No sooner than thirty (30) days following the date of this notice, the Presiding Officer may set a time and location of a pre-hearing conference and will so notify all parties;

D. The permit may be amended by the Regional Administrator prior to or after the Adjudicatory Hearing and any person interested in the particular proposed permit must request to be a party in order to preserve any right to appeal the final administrative determination;

E. Parties may be represented by counsel or other duly authorized representatives.

F. Any State with certification rights under Section 1341 of the Act must certify or deny certification within thirty (30) days after it is notified that a permit has been amended after a request for an Adjudicatory Hearing has been granted. Failure to certify or deny certification shall be deemed a waiver of such certification rights.

A request to be admitted as an additional party for this hearing shall set forth all material issues of fact the requestor seeks to be considered at the Adjudicatory Hearing (whether such issues are noticed herein or are in addition thereto) and shall:

- (i) State the name and address of the person making such request;
- (ii) Identify the interest of the requestor which is affected by the proposed issuance of the permit contained in the determination of the Regional Administrator;
- (iii) Identify any persons whom the requestor represents;
- (iv) Include an agreement by the requestor to be subject to examination and cross-examination and to make any employee or consultant of such requestor or other person represented by the requestor available for examination and cross-examination at the expense of such requestor or such other person upon the request of the Presiding Officer, on his own motion, or on the motion of any party;
- (v) State with particularity the reasons for the request;
- (vi) State with particularity the issues proposed to be considered at the hearing; and
- (vii) Include proposed terms and conditions which, in the judgment of the requestor, would be required to carry out the intentment of the Act.

An original and two (2) copies of all documents or papers required or authorized to be filed shall be filed with the Regional Hearing Clerk.

Except for requests to be a party, at the same time that a party files with the Regional Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials proposed to be introduced into evidence, it shall serve upon all other parties copies thereof. A certification of service shall be provided on or accompany each document or paper filed with the Regional Hearing Clerk.

The address and phone number of the Regional Hearing Clerk follows:

Ms. Helen Lee
U. S. Environmental Protection Agency
Region II
Room 1009
26 Federal Plaza
New York, New York 10007
(212) 264-9887

The following address and phone number is supplied for any interested person to use for contact with the EPA for matters concerning the procedures to be followed in the conduct of the Adjudicatory Hearing:

Henry Gluckstern, Esq.
U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
(212) 264- 4430

Copies of the permit and a fact sheet (if any) may be obtained from the Status of Compliance Branch, EPA, Region II, at the above address, either by mail, by calling 212-264-9881 or by coming in person between 8:00 a.m. and 4:30 p.m. Monday through Friday. Other forms and documents relating to the permit may be inspected at the office of the Status of Compliance Branch. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Exhibit I



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
- NEW YORK, NEW YORK 10007

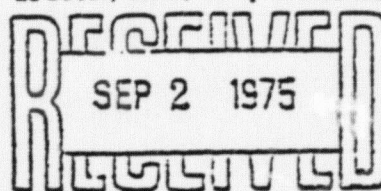
JA 238

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Carl L. Newman
Vice President of Engineering
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, New York 10003

AUG 28 1975

LaBosni, Lamb, Leiby & MacRae



Per *DL*

Re: Granting of Adjudicatory hearing,
Indian Point Generating Station,
Unit 3

Permit No.: NY 002 7065

Docket No.: II-WP-75-100

Dear Mr. Newman:

The United States Environmental Protection Agency has received your letter dated July 31, 1975 containing a timely request for an Adjudicatory Hearing pursuant to the provisions of Title 40, Section 125 of the Code of Federal Regulations, as amended, 39 Federal Register 143, pp. 27079-27084 (July 24, 1974). This request concerned the National Pollutant Discharge Elimination System (NPDES) permit issued by the EPA to the above-referenced facility. Please be advised that the request has been granted.

Enclosed please find a copy of the Public Notice of the granting of this Hearing. This Notice will be published on the date indicated thereon. This Notice details the issues you have proposed for consideration at the Hearing as well as the conditions of the issued NPDES permit which I have determined are contested. The effectiveness of these contested conditions is stayed pending final EPA action pursuant to 40 CFR 125.36.

As a result of this Public Notice procedure all parties to the Hearing will be determined. Subsequently a time and place for the Hearing will be set in consultation with all parties and the Presiding Officer.

Please be advised that the conditions of the issued permit not referenced in the Public Notice as stayed are determined to

be uncontested, issued and effective. Failure to comply with the uncontested conditions of the permit will result in a violation of the permit.

This matter has been assigned Docket No. II-WP-75-100. Please refer to this number in any future correspondence. In addition, please direct any future correspondence concerning this matter, in triplicate, to:

Ms. Helen Lee
Regional Hearing Clerk
Room 1009
U.S. Environmental Protection Agency
26 Federal Plaza
New York, New York 10007

Thank you very much for your cooperation with the NPDES program.

Sincerely yours,

Me Scolnick
Director
Enforcement Division

Enclosure

cc: Ms. Helen Lee
Regional Hearing Clerk

Arvin E. Upton, Esq.
LeBoeuf, Lamb, Leiby & MacRae
1757 N Street, N.W.
Washington, D.C. 20036

Malcolm Coutant, Esq.
Compliance Counsel
New York State Department of
Environmental Conservation
50 Wolf Road
Albany, New York 12233

United States Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007.
212-264-2515

PUBLIC NOTICE OF ADJUDICATORY HEARING

No. NPDES 75-697

Date: SEP 12 1975

Notice is hereby given that the United States Environmental Protection Agency (EPA) has granted a request from

Carl L. Newman
Vice President of Engineering
Consolidated Edison Company
of New York, Inc.

for an Adjudicatory Hearing on the National Pollutant Discharge Elimination System (NPDES) permit (No. NY 002 7065) issued under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S. Code §§1251-1376 (the Act) to Consolidated Edison for discharges from its Indian Point Generating Station, Unit 3, located in Buchanan, New York, to the Hudson River.

Public Notice of EPA's intention to issue the subject NPDES permit was given on May 2, 1975 , Notice No. NPDES 75-377

The following is a brief description of the permittee's activities.

The permittee's Indian Point Generating Station, Unit 3, will have an electrical net rated output of 965 MWe. (A design power level of 1,023 MWe is anticipated in the future.) Unit 3, which is expected to commence commercial operation during 1975, will have a pressurized water nuclear reactor which uses enriched uranium as fuel. It should be noted that a NPDES permit has previously been issued (on February 28, 1975) for the existing Indian Point Station Units 1 and 2 (Permit No. NY 0004472), located at the same site as Unit 3. The nameplate capacity of Units 1 and 2 are 275 MWe and 1013 MWe, respectively.

All effluents from Unit 3 (except intake screen backwash) will be discharged together with effluents from Units 1 and 2 via a common submerged multiport diffuser (001). The contribution from Unit 3 will have a maximum flow of 870,000 gallons per minute (gpm) of which 840,000 gpm is condenser cooling water, 30,000 gpm is service cooling water, and the remainder is steam generator blowdown (6,000 gallons per day average) and flash evaporation blowdown (28,800 gallons per day average). Ion exchanger regeneration wastes, radioactive liquid wastes and plant laundry wastes will be treated by the treatment facilities for Units 1 and 2. The total maximum flow of the common discharge for Units 1-3 will be 2,059,000 gpm, of which 1,960,000 gpm is condenser cooling water and 99,000 gpm is service water. Discharge 002 results from intake screen backwash and will have a maximum flow of 432,000 gallons per day. Coarse debris is removed from the river and disposed of in a local refuse dump. The SIC code for this industry is 4911.

The following issues are raised by the requestor of the Adjudicatory Hearing:

(1) Whether Condition 3 at page 2 of 29 pages should be modified to provide an opportunity for a hearing on the imposition of any toxic effluent standard or prohibition to be imposed on the permittee in the future?

(2)(a) Whether the initial effluent limitations in Condition 9.b.(1) at page 4 of 29 pages should be either deleted as unnecessary and unauthorized by the Final Effluent Guidelines for its Steam Electric Generating Point Source Category or modified to allow the permittee to exceed them up to 10% of the time due to system operating variations, without incurring a violation?

(2)(b) Whether the initial effluent limitation in Condition 9.b.(1) at page 4 of 29 pages are more stringent than necessary to meet State Water Quality Standards?

(3) Whether the monitoring requirements of Condition 12 at page 14 of 29 pages should be modified to eliminate monitoring of Unit 3 effluent separate from that of Unit 1 or 2?

(4) Whether Condition 9.b.(4) at page 5 of 29 pages relating to oil and grease limitation should be deleted?

(5)(a) Whether Condition 9.c.(2)(a) at page 6 of 29 pages Contingency Procedures, should be modified to change the fish collection numbers which would cause initiation of contingency procedures from 5000/day for 3 days and 15000/day to 10000/day for 3 days and 30000/day?

(5)(b) Whether references to the Regional Administrator should be deleted from Condition 9.c.(2)(a) at page 6 of 29 pages?

(5)(c) Whether Condition 9.c.(2)(c) should be modified to conform to the certification received from the New York State Department of Environmental Conservation (NYSDEC) pursuant to §401 of the Act?

(5)(d) Whether Condition 9.c.(3) at page 8 of 29 pages should be modified so that the first paragraph corresponds to the wording of the certification received from the NYSDEC pursuant to §401 of the Act and whether an additional provision should be added obligating the permittee to construct a new intake system at the subject facility?

(6) Whether the compliance date in Condition 10.(b) at page 10 of 29 pages should be changed from September 15, 1980 to July 1, 1981?

(7) Whether a cost-benefit analysis on the installation of closed-cycle cooling at Unit 3 would show that once-through cooling represents "best available technology economically achievable" for this Unit?

(8) Whether within the meaning of the Final Effluent Guidelines for the Steam Electric Generating Point Source Category, land is "available" at Unit 3 for construction of a closed-cycle cooling system?

(9) Whether the limitations imposed by Condition 10.(b) at page 10 of 29 pages are more stringent than necessary to assure the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife in and on the Hudson River?

(10) Whether the denial of the permittee's request for alternative effluent limitations as to Effluent Guidelines limitations was arbitrary, capricious, and contrary to law?

(11) Whether closed-cycle cooling as required in Condition 10.(b) at page 10 of 29 pages may be imposed as best technological design and capacity of intake structures pursuant to §316(b) of the Act?

(12) Whether modifications to existing intake structures may be required pursuant to §316(b) of the Act without first performing a cost-benefit analysis?

(13) Whether the Regional Administrator should defer his final determination with respect to Con Edison's §316(a) request until identification of any inadequacy in Con Edison's submittal in support of that request and the submittal of additional information, if necessary?

(14) Whether Condition 10.(b)(2)(b) at page 11 of 29 pages should be deleted as an unauthorized direct imposition of State Water Quality Standards?

(15) Whether Condition 11.b. at page 13 of 29 pages should be either deleted as an implementation schedule for unauthorized abatement, stayed until a final determination is made on the permittee's request for alternative thermal limitations or revised to require compliance by July 1, 1981 rather than September 15, 1980?

(16)(a) Whether Condition 11.b. at page 13 of 29 pages should be modified to require that only preliminary plans and specifications be submitted by the date indicated in Condition 11.b.(a)?

(16)(b) Whether Condition 11.b. at page 13 of 29 pages should be modified to allow for construction delays beyond the permittee's control?

(17) Whether the commencement date of Condition 12.(a) at page 14 of 29 pages should be changed from August 1, 1975 to January 1, 1976, and whether the footnote at page 15 of 29 pages relating to continuous monitoring of Free Available Chlorine and Discharge Temperature for Unit 3 only, should be deleted?

(18) Whether the requirement in Condition 12(a)(1) at page 14 of 29 pages for separate monitoring of the Unit 3 discharge temperature should be deleted?

(19) Whether the monitoring frequency in Sampling Schedule II at page 16 of 29 pages should be substituted for the monitoring frequency in Sampling Schedules III and IV at page 16 of 29 pages?

(20) Whether Condition 12(c)(1)(a) at page 17 of 29 pages should be revised to agree with the certification from the NYSDEC pursuant to §401 of the Act?

(21) Whether the reporting frequency in Condition 12(h) at page 23 of 29 pages should be changed from "Monthly" to "Quarterly"?

(22) Whether Condition 13 at page 23 of 29 pages should be revised to allow for the discharge of dead fish?

(23) Whether Condition 15 at page 23 of 29 pages should be modified to relieve the permittee of liability for failure to comply with the terms of its permit for reasons beyond its control?

Pending the completion of the Adjudicatory Hearing process the effectiveness of the following conditions to the issued NPDES permit is stayed.

- (1) Condition 3.
- (2) Condition 9.b.(1).
- (3) Condition 12 as it relates to separate monitoring of Unit 3 effluent.
- (4) Condition 9.b.(4).
- (5) Condition 9.c.(2)(a) as it relates to specific fish collection numbers.
- (6) Condition 9.c.(2)(c).
- (7) Condition 9.c.(3).
- (8) Condition 10.(b).
- (9) Condition 11.b.
- (10) Condition 12.(a) as it relates to the specific commencement date and monitoring of Free Available Chlorine and Discharge Temperature for Unit 3.
- (11) Condition 12(a)(1) as it relates to separate monitoring of the Unit 3 discharge temperature.
- (12) Condition 12(b) as it relates to the monitoring frequency in Sampling Schedules III and IV.
- (13) Condition 12(c)(1)(a).
- (14) Condition 12(h) as it relates to reporting frequency.
- (15) Condition 13.
- (16) Condition 15.

The Adjudicatory Hearing shall be conducted pursuant to the procedures set forth under 40 Code of Federal Regulations, Section 125.36, as amended, by 39 Federal Register 143, pp.27079-27084 (July 24, 1974). The following rules with regard to the entire Adjudicatory Hearing process shall be followed:

- A. Any interested person may file with the Regional Hearing Clerk a request to be admitted as a party to the hearing. Such a request must be filed by:
- B. Any party may at any time prior to the hearing submit any documents or written evidence or testimony which he intends to introduce at the hearing;
- C. No sooner than thirty (30) days following the date of this notice, the Presiding Officer may set a time and location of a pre-hearing conference and will so notify all parties;
- D. The permit may be amended by the Regional Administrator prior to or after the Adjudicatory Hearing and any person interested in the particular proposed permit must request to be a party in order to preserve any right to appeal the final administrative determination;
- E. Parties may be represented by counsel or other duly authorized representatives.
- F. Any State with certification rights under Section 1341 of the Act must certify or deny certification within thirty (30) days after it is notified that a permit has been amended after a request for an Adjudicatory Hearing has been granted. Failure to certify or deny certification shall be deemed a waiver of such certification rights.

A request to be admitted as an additional party for this hearing shall set forth all material issues of fact the requestor seeks to be considered at the Adjudicatory Hearing (whether such issues are noticed herein or are in addition thereto) and shall:

- (i) State the name and address of the person making such request;
- (ii) Identify the interest of the requestor which is affected by the proposed issuance of the permit contained in the determination of the Regional Administrator;
- (iii) Identify any persons whom the requestor represents;
- (iv) Include an agreement by the requestor to be subject to examination and cross-examination and to make any employee or consultant of such requestor or other person represented by the requestor available for examination and cross-examination at the expense of such requestor or such other person upon the request of the Presiding Officer, on his own motion, or on the motion of any party;
- (v) State with particularity the reasons for the request;
- (vi) State with particularity the issues proposed to be considered at the hearing; and
- (vii) Include proposed terms and conditions which, in the judgment of the requestor, would be required to carry out the intendment of the Act.

An original and two (2) copies of all documents or papers required or authorized to be filed shall be filed with the Regional Hearing Clerk.

Except for requests to be a party, at the same time that a party files with the Regional Hearing Clerk any additional issues for consideration at the hearing or any written testimony, documents, papers, exhibits, or materials proposed to be introduced into evidence, it shall serve upon all other parties copies thereof. A certification of service shall be provided on or accompany each document or paper filed with the Regional Hearing Clerk.

The address and phone number of the Regional Hearing Clerk follows:

Ms. Helen Lee
U. S. Environmental Protection Agency
Region II
Room 1009
26 Federal Plaza
New York, New York 10007
(212) 264-9887

The following address and phone number is supplied for any interested person to use for contact with the EPA for matters concerning the procedures to be followed in the conduct of the Adjudicatory Hearing:

Henry Gluckstern, Esq.
U. S. Environmental Protection Agency
Region II
26 Federal Plaza
New York, New York 10007
(212) 264-4430

Copies of the permit and a fact sheet (if any) may be obtained from the Status of Compliance Branch, EPA, Region II, at the above address, either by mail, by calling 212-264-9881 or by coming in person between 8:00 a.m. and 4:30 p.m. Monday through Friday. Other forms and documents relating to the permit may be inspected at the office of the Status of Compliance Branch. Copies will be provided at a charge of \$.20 per copy sheet.

Richard Baker
Chief
Status of Compliance Branch
Enforcement and Regional Counsel Division

Exhibit J

Persons wishing to attend this meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting is to discuss further plans for public employment subcommittee projects and school desegregation surveys.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 20, 1975.

ISAIAH T. CRAWFELL, Jr.,
Advisory Committee
Management Officer.

[FR Doc. 75-31820 Filed 11-21-75; 8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 456-4]

MISSOURI

Marine Sanitation Device Standard

On May 15, 1975, notice was given that the State of Missouri had petitioned the Administrator, Environmental Protection Agency, to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels within the State of Missouri are reasonably available for the waters of the State, with the exception of those boats engaged in interstate commerce on the Missouri and Mississippi Rivers. The action was requested pursuant to section 312(f)(3) of Pub. L. 92-500 (40 FR 21064, May 15, 1975).

Petitions signed by 2,992 individuals were received in support of the State of Missouri's application; petitions signed by 2,864 individuals were received in opposition to the State of Missouri's petition. Additional comments were received from the Lake of the Ozarks Yachting Association, the Boat Owners Association of the United States, Great Lakes Cruising Club, the Lauderdale Marina, Inc. of Fort Lauderdale, Florida, and a private citizen.

Section 312(f)(3) of the Act states, "[A]fter the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such State require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such waters to which such prohibition would apply."

Following an examination of the petition and the supporting information, and a consideration of all comments received pursuant to the May 15 Federal Register

notice, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the State of Missouri with the exception of the western portion of Bull Shoals Lake north from the Corps of Engineers location marker number 34, which is located near the Arkansas-Missouri State line, and the Missouri and Mississippi Rivers. This determination is made pursuant to section 312(f)(3) of Pub. L. 92-500.

The information submitted to me indicates that for the Lake of the Ozarks there are 10 pump-out facilities and that most of the cruiser traffic on the Lake is between Bagnal Dam and the 30-mile mark because navigation on the upper end of the Lake has the hazard of going aground on mudflats. It is reasonable to assume that pump-out facilities designed to service the general boating public are not available in waters too hazardous for normal boating purposes. Thus, I have determined that pump-out facilities for the Lake of the Ozarks are reasonably available. Further, such information indicates that in Pomme de Terre Lake, the farthest distance one could operate a cruiser from a pump-out station would be approximately five miles. This lake has three such facilities. Stockton Lake has two pump-out stations; Tablerock has five pump-out stations and the information indicates that vessels with marine sanitation devices would be within 10 miles from such facilities on either lake. Norfolk and Clearwater Lakes have no pump-out facilities but support no cruiser traffic. In Lake Wapapello there are no pump-out facilities, but there are three boats equipped with portable potties that use on-shore toilet facilities for disposal.

The information that I have received indicates that the Missouri River has no pump-out facilities. Alton Pool, on the Mississippi River, has seven pump-out facilities, however, we have determined that the draught adjacent to the pump-out facility precludes commercial vessels from using those available. Since section 312(f)(3) of Pub. L. 92-500 mandates a determination that adequate facilities are available for all vessels to which any no-discharge prohibition would apply, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage are not reasonably available for the Missouri and Mississippi Rivers.

There appears to be eight vessels equipped with marine sanitation devices moored in the Missouri portion of Bull Shoals Lake, whereas all pump-out facilities are located across the State boundary in the State of Arkansas. Two such vessels are moored a distance of six miles from the nearest pump-out facility; two of the vessels are moored a distance of 12 miles from the nearest pump-out facility; and four of the vessels are moored a distance of 20 miles from the nearest pump-out facility. In my judgment, a pump-out facility located 20 miles from the mooring place of 50 percent of the vessels with

marine sanitation devices for any lake does not represent reasonable availability of such facilities. Obviously, a definition of "reasonably available" could vary from one waterway to another and certainly it would be influenced momentarily through climatic and other factors. A Corps of Engineers 1973 map indicates marker number 34 as a logical place to determine the boundaries within which adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Bull Shoals Lake; the marker is within 10 miles of a pump-out station and separates an additional 10 miles of an arm of Bull Shoals Lake beyond this point. Vessels with marine sanitation devices using this arm may be as far as 20 miles from the nearest pump-out facility. Thus, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for Bull Shoals Lake, with the exception of the western portion of said Lake, north from the Corps of Engineers location marker number 34, which is located near the Arkansas-Missouri State line.

Dated: November 18, 1975.

JORN QUARLES,
Acting Administrator.

[FR Doc. 75-31533 Filed 11-21-75; 8:45 am]

[FRL 456-4]

NEW YORK

Notice of Approval of Program for Control of Discharges of Pollutants to Navigable Waters

Notice is given hereby that the U.S. Environmental Protection Agency (EPA) has granted the State of New York's request for approval of its program for controlling discharges of pollutants to navigable waters in accordance with the National Pollutant Discharge Elimination System (NPDES), pursuant to section 402(b) of the Federal Water Pollution Control Act, as amended (Pub. L. 92-500, 86 Stat. 815, 33 U.S.C. 1251; the Act).

Section 402 of the Act established the NPDES program, under which the Administrator of EPA may issue permits for the discharge of a pollutant upon the condition that the discharge meets applicable requirements of the Act. Section 402(b) provides that any State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit its proposed program to the Administrator. If the Administrator determines that the State has adequate authority to carry out the Act's requirements, he shall approve the submission and suspend the issuance of permits as to those navigable waters subject to the program. Guidelines specifying procedural and other elements for State NPDES programs appear at 40 CFR Part 124 (as amended by 38 FR 18000, July 5, 1973, and 33 FR 19894, July 24, 1973).

On April 8, 1974, New York submitted a program for carrying out its proposed NPDES program. Because of certain

NOTICES

legislative defects, appropriate legislative amendments were enacted. Thereafter, on April 16, 1975, New York resubmitted its proposed NPDES program. On June 4, 1975, EPA held a public hearing on the proposed approval in Albany, New York. Subsequently, the State sought and was granted extension so that the State could promulgate appropriate implementing regulations and prepare to undertake administration of its NPDES program. The State's NPDES regulations became effective on August 29, 1975.

After a review of New York's proposed NPDES program, the accompanying legal certification, and all comments submitted by the public during and after the public hearing, the Administrator determined that the State's authority was adequate to carry out the requirements of the Act, and so informed Governor Hugh L. Carey, in a letter dated October 23, 1975.

As of October 29, 1975, the New York NPDES permit program is being administered by the New York Department of Environmental Conservation (DEC), 50 Wolf Road, Albany, New York 12233 (telephone (518) 457-3446). Mr. Ogden Reid is Commissioner of the DEC. The New York program is being administered in accordance with New York statutes and regulations and two Memoranda of Agreement, one between the DEC and EPA's Region II office, 26 Federal Plaza, New York, New York 10007 (telephone (212) 264-2525), and the other between Region II and the New York Board on Electric Generation Siting and the Environment.

All pertinent documents are available for inspection at the DEC, at EPA's New York Regional Office and at EPA's Headquarters in Room 3201, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

STANLEY W. LEGRO,
Assistant Administrator
for Enforcement.

NOVEMBER 19, 1975.

[FR Doc. 75-31687 Filed 11-21-75; 8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Radio No. 778]

COMMON CARRIER SERVICES INFORMATION

Applications Accepted for Filing

NOVEMBER 10, 1975.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications, if upon further examina-

* All applications listed below are subject to further consideration and review and may be returned and/or dismissed if not found to be in accordance with the Commission's Rules, regulations and other requirements.

* The above alternative cut-off rules apply to those applications listed below as having been accepted in Domestic Public Land Mobile Radio, Rural Radio Point-to-Point Microwave Radio and Local Television Transmission Services (Part 21 of the Rules).

tion, it is determined they are defective and not in conformance with the Commission's Rules and Regulations or its policies.

Final action will not be taken on any of these applications earlier than 31 days following the date of this notice, except for radio applications not requiring a 30 day notice period (see § 309(c) of the Communications Act of 1934) or as otherwise noted. Unless specified to the contrary, comments or petitions may be filed concerning any of these applications within 30 days of the date of this notice.

In order for an application filed under Part 21 of the Commission's Rules (Domestic Public Radio Services) to be considered mutually exclusive with any other such application appearing herein, it must be substantially complete and tendered for filing by whichever date is earlier: (a) the close of business one business day preceding the day on which the Commission takes action on the previously filed application; or (b) within 60 days after the date of the public notice listing the first prior filed application (with which the subsequent application is in conflict) as having been accepted for filing. In common carrier radio services other than those listed under Part 21, the cut-off date for filing a mutually exclusive application is the close of business one business day preceding the day on which the previously filed application is designated for hearing. With limited exceptions, an application which has subsequently amended by a major change will be considered as a newly filed application for purposes of the cut-off rule. [See § 1.227(b)(3) and 21.30(b) of the Commission's Rules.]

FEDERAL COMMUNICATIONS
COMMISSION,
VINCENT J. MULLINS,
Secretary.

APPLICATIONS ACCEPTED FOR FILING

DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

20734-CD-AL-76, KWIK KALL Communications Co. Consent to Assignment of License from Andrew Hawkins d.b.a. KWIK KALL Communications Co., Assignor, to Hawkins Communications, Inc., Assignee. (KUD-232—Washington, D.C.)

20755-CD-P-(2)-76, RAM Broadcasting of Washington, Inc. (KTR996), C.P. for additional facilities to operate 454.025 MHz at new Loc. No. 2: Capital Park, 525-1 th Ave. E., Seattle, Washington, and for additional facilities to operate on 454.125 MHz at new Loc. No. 3: Beacon Towers, 1311 S. Massachusetts, Seattle, Washington.

20756-CD-P-76, ACE Commercial Services, Inc. (KQZ741), C.P. to change antenna location operating on 152.06 MHz to East of Ridge Road North, Columbus, Mississippi.

20757-CD-P-76, Radio Telephone, Inc. (KRM948), C.P. to relocate facilities operating on 158.70 MHz to Peachtree Plaza Hotel, Atlanta, Georgia.

20758-CD-P-76, Radio Telephone, Inc. (ETS269), C.P. to relocate facilities operating on 43.22 MHz to Peachtree Plaza Hotel, Atlanta, Georgia (1-way-signaling).

20759-CD-P-(3)-76, Central Telephone Company (KOE273), C.P. for additional facilities to operate on 152.54, 152.57, 152.78 MHz to be located at 5th and Carson Streets, Lasland, Missouri (1-way-signaling).

20760-CD-P-76, Norman County Telephone Company, Inc. (New), C.P. for a new station to operate on 152.57 MHz to be located on U.S. Hwy. 59, 1/2 mile South of Westbury, Minn.

20761-CD-P-76, Certified Communications, Inc. (KRS635), C.P. for additional facilities to operate on existing frequency 152.24 MHz located at 9910 Page Boulevard, Overland, Missouri (1-way-signaling).

20762-CD-P-76, Canaveral Communications, Inc. (KUO561), C.P. for additional facilities to operate on 152.24 MHz at new Loc. No. 2: 2.8 miles South Southeast of Sebastian, Indian River, Florida (1-way-signaling).

20763-CD-AP-76, Empire Paging Corporation. Consent to Assignment of Permit from Empire Paging Corporation, Assignor, to Mobile Telephone Company of New Jersey, Assignee, Station KW1995, Neptune, New Jersey (formerly granted under Call Sign KEJ886). For Particulars, PN No. 748-A, dated April 8, 1975 (File No.: 7428-C2-P-70).

20764-CD-P-(8)-76, Southwestern Bell Telephone Company (New), C.P. for a new 1-way station to operate on 158.10 MHz at Loc. No. 1: 1010 Pine Street, St. Louis, Mo.; and at Loc. No. 2: 707 St. Joseph St., Florissant, Mo.; at Loc. No. 3: 402 North 3rd St., St. Charles, Mo.; at Loc. No. 4: Wild Horse Creek and Wilson Roads, Chesterfield, Mo.; at Loc. No. 5: 200 Manchester Road, Manchester, Mo.; at Loc. No. 6: South of country road PP, High Ridge, Mo.; at Loc. No. 7: 1679 Big Bill Road, Marville, Mo.; at Loc. No. 8: 6214 Delmar, St. Louis, Missouri.

20765-CD-P-(3)-76, Caprock Radio Dispatch (EKO353), C.P. for additional Developmental facilities to operate on 152.195 MHz (Base) and 459.125 MHz (Repeater) at new Loc. No. 9: 7 miles NW of Maljamar, New Mexico; also for additional Developmental facilities to operate on 154.125 MHz (Control) at existing Loc. No. 7: 601 North Grimes Street, Hobbs, New Mexico.

20766-CD-P-76, Harbor Communications, Inc. (New), C.P. for a new station to operate on 152.18 MHz to be located at 511 Fort Street, Port Huron, Michigan.

20767-CD-P-76, Southwestern Bell Telephone Company (KAA690), C.P. to relocate facilities operating on 152.66 MHz to be located 0.25 mile East of St. Joseph, Missouri.

20768-CD-P-(2)-76, Telephone Answering Bureau, Inc. (New), C.P. for a new station to be operated on 152.09 MHz and 152.15 MHz (Base) to be located at Pleasant Mtn., 1.25 miles SW of Graniteville, near Williamstown, Vermont.

20770-CD-P-76, The Ohio Bell Telephone Company (KFJ891), C.P. to relocate facilities operating on 152.84 MHz (Base) to be located at 66 Norton Road, New Rome, Ohio (1-way-signaling).

20771-CD-P-(3)-76, Collins Radio Communications Corporation (New), C.P. for a new station to operate on 152.03 MHz (Base) and 459.075 MHz (Repeater) at Loc. No. 1: 2 miles SE of Route 56, 5 miles NE of Douglas, Wyoming; also to be operated on 454.075 MHz (Control) at Loc. No. 2: 212 N. 2nd Street, Douglas, Wyoming.

Informative:

It appears that the following applications may be mutually exclusive and subject to the Commission's Rules regarding ex parte presentations, by reasons of potential electrical interference.

FN: 20601-CD-P-(3)-76, Empire Mobilcomm Systems, Inc. (EOK419) Salem, Oregon.
FN: 20369-CD-P-(3)-76, RAM Broadcasting of Oregon, Inc. (EUC574) Portland, Oregon.

Frequencies: 454.150, 454.250, 454.300 MHz.

1. By Commission action of September 23, 1974, the First Report and Order in Docket 20490 was adopted.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC CORPORATION; CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; ORANGE AND ROCKLAND UTILITIES, INC.; AND POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DOUGLAS M. COSTLE, as Administrator, U.S. Environmental Protection Agency, ECKHARDT C. BECK, Regional Administrator, Region II, U.S. Environmental Protection Agency, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and PETER A.A. BEPLE, Commissioner, New York State Department of Environmental Conservation.

Defendants.

Plaintiff's Motion for Summary Judgment and Affidavit of Joseph D. Block in Support of Motion for Summary Judgment

LEBOEUF, LAMB, LEIBY & MACRAE

140 BROADWAY
NEW YORK, N. Y. 10005
212-269-1100

ATTORNEYS FOR
Plaintiffs

JA 252

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC CORPORATION; :
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC; :
ORANGE AND ROCKLAND UTILITIES, INC; and :
POWER AUTHORITY OF THE STATE OF NEW YORK, :

Plaintiffs,

-against-

: PLAINTIFFS' RULE
9(q) STATEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.

ROBERTAS M. COSILE, as Administrator, U.S. Environmental Protection Agency, :
ECKARDT C. BECK, Regional Administrator, :
Region II, U.S. Environmental Protection Agency, :

Index No.
77 Civ. 4870
(R.L.C.)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and

PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

This statement is made pursuant to General Rule 9(g)

Of the Rules of the United States District Court for the Southern District of New York, in support of the motion for summary judgment by plaintiffs Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Power Authority of the State of New York, and sets forth the material facts as to which there exist no genuine issues to be tried:

1. Plaintiff Central Hudson Gas & Electric Corporation ("Central Hudson") is a New York corporation engaged in, among other things, generation and distribution of electricity in parts of Putnam, Dutchess and other counties in New York State pursuant to regulation by the New York State Public

Service Commission ("PSC"), and maintains its principal offices at 284 South Avenue, Poughkeepsie, New York 12602.

2. Plaintiff Consolidated Edison Company of New York, Inc. ("Con Edison") is a New York corporation engaged in, among other things, the generation and distribution of electricity in New York City and parts of Westchester County, pursuant to regulation by the PSC, and maintains its principal offices at 4 Irving Place, New York, New York 10003.

3. Plaintiff Orange and Rockland Utilities, Inc. ("Orange and Rockland") is a New York corporation engaged in, among other things, the generation and distribution of electricity in Orange and Rockland Counties and elsewhere pursuant to regulation by the PSC and maintains its principal offices at One Blue Hill Plaza, Pearl River, New York 10965.

4. Plaintiff Power Authority of the State of New York ("Power Authority") is a corporate municipal instrumentality and political subdivision of the State of New York, organized pursuant to the Laws of the State of New York, [See, N.Y. Public Authorities Law, §1000 et seq. (McKinney's 1970)], is engaged in the generation and wholesale sale of electricity, and maintains its principal offices at 10 Columbus Circle, New York, New York 10019.

5. Defendant United States Environmental Protection Agency ("EPA") is an agency of the United States organized pursuant to Reorganization Plan 3 of 1970, 3 C.F.R. 1072 (1966-1970 Compilation), reprinted in 5 U.S.C., app., at 609(1970).

6. Defendant Douglas M. Costle is the Administrator of EPA and maintains his office at Fourth and M Streets, S.W., Washington, D.C. 20460.

7. Defendant Eckardt C. Beck is the Regional Administrator of Region II of EPA, and maintains his office at 26 Federal Plaza, New York, New York 10007.

8. Defendant New York State Department of Environmental Conservation ("NYDEC") is an agency of the State of New York, maintains its principal offices at 50 Wolf Road, Albany, New York 12233, and maintains an office at 2 World Trade Center, New York, New York 10097.

9. Defendant Peter A.A. Berle is the Commissioner of NYDEC, and maintains his office at 50 Wolf Road, Albany, New York 12233.

10. Plaintiff Central Hudson operates Roseton Generating Station, a power plant which consists of two oil-fired steam-electric generating units of 600 megawatts (mw) capacity each, located on the west bank of the Hudson River near Roseton, in Orange County, New York. Roseton Generating Station is owned by Niagara Mohawk Power Corporation and plaintiffs Central Hudson and Con Edison as tenants-in-common.

11. Plaintiff Orange and Rockland operates Bowline Point Generating Station, which consists of two 600 mw oil-fired steam-electric generating units located on the west bank of the Hudson River near Haverstraw, in Rockland County, New York. Bowline Point Generating Station is owned by plaintiffs Orange and Rockland and Con Edison as tenants-in-common.

12. Plaintiff Con Edison owns and operates Indian Point Unit 2, an 873 mw nuclear steam-electric generating unit located on the east bank of the Hudson River near Buchanan, in Westchester County, New York.

13. Plaintiff Power Authority owns Indian Point Unit 3. Plaintiff Power Authority acquired title to Indian Point Unit 3 from Con Edison on December 31, 1975. Indian Point Unit 3 is a 965 mw nuclear steam-electric generating unit located on the same site as, and adjacent to, Indian Point Unit 2. Indian Point Unit 3 is operated by plaintiff Con Edison.

14. Each unit of the above power plants generates electricity by causing the armature of a generator to rotate in a magnetic field. The rotational force is produced by a steam-driven turbine, which converts heat energy from steam into rotational mechanical energy. The steam is produced by burning fuel such as oil, or from a nuclear reaction. Thermodynamic laws require that a portion of the heat energy thus produced be removed from the electric generating unit by a cooling system. Each of these electric generating units currently employs what is known as a once-through cooling system: Pumps housed in an intake structure located on the river bank withdraw water from the Hudson River, circulate the water through condensers in the power plant where heat is transferred to the cooling water, and then return the cooling water to the river at an increased temperature.

15. Since the effective date of the Federal Water Pollution Control Act (the "Act"), 33 U.S.C. §§1251-1376 (Supp. V 1975), as amended in 1972 (P.L. 92-500), there have been pending before defendant EPA applications for permits pursuant to §402 of the Act (citations herein to the Act are to the Public Law text and section numbers) for discharges from Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station; and since July 9, 1974, there has been .

pending before defendant EPA a similar application for Indian Point Unit 3.

16. Each of these applications seeks determination of the terms and conditions upon which operation of plaintiffs' power plants will be permitted, in accordance with the requirement of Section 301(b)(2) of the Act that "best available technology economically achievable" be achieved by July 1, 1983, and other provisions of the Act. To date, no final determination has been reached with respect to plaintiffs' power plants.

17. In the cases of Indian Point Unit 2, Bowline Point Generating Station, and Roseton Generating Station, the EPA Region II Administrator, Gerald Hansler (predecessor of defendant Eckardt C. Beck), caused to be prepared for each respective plaintiff operating such unit a "Notice of Issuance of Final Determination" dated February 28, 1975. With respect to the pending permit application in the case of Indian Point Unit 3, said EPA Region II Administrator Hansler caused to be prepared a "Notice of Issuance of Final Determination" under date of June 27, 1975.

18. The "Notices" referred to in Paragraph 17, in the case of each of the aforementioned generating units, provided in relevant part:

"Notice is hereby given that Region II of the United States Environmental Protection Agency (EPA) proposes to issue a final national pollutant discharge elimination system (NPDES) permit...to discharge pollutants into the waters of the United States.

* * *

The Final Determination will become a final NPDES permit, issued and effective on March 31, 1975 [on July 31, 1975 in the case of Indian Point Unit 3] unless an Adjudicatory Hearing is granted pursuant to

40 CFR §125.36 as published at 39 Fed. Reg. pp. 27081-27084 (July 24, 1974)..." (Emphasis added).

Enclosed with each Notice was a "Final Determination" in the form of a document entitled "National Pollutant Discharge Elimination System Permit, Discharge Permit" (hereinafter referred to for convenience as an "NPDES permit").

19. In the case of Central Hudson's Roseton units, and Orange and Rockland's Bowline units, the NPDES permits provide that no later than July 1, 1981, plaintiffs Central Hudson and Orange and Rockland shall reduce the discharge of heat from Roseton and Bowline by more than 90%.

20. In the cases of Indian Point Units 2 and 3, the NPDES permits would likewise require reduction of heat discharged from those units by more than 90%, to be accomplished under the Indian Point Unit 2 permit by no later than May 1, 1979, and under the Indian Point Unit 3 permit by no later than September 15, 1980.

21. Compliance with the requirements described in Paragraphs 19 and 20 in each case would mean, as a practical matter, that plaintiffs would be required to install, at substantial cost, a cooling tower (a type of "closed cycle cooling system") at each of the electric generating units at the power plants herein, and to abandon the once-through cooling systems now in use at those power plants.

22. Upon receipt of the Notices of Issuance of Final Determination and proposed NPDES permits described in Paragraph 18, each plaintiff timely requested an adjudicatory hearing with respect to each generating unit it was then operating.

23. In the case of Central Hudson's Roseton Generating Station, EPA Region II Administrator Hansler thereafter granted an adjudicatory hearing to Central Hudson by letter dated May 1, 1975. In the case of plaintiff Orange and Rockland's Bowline Point Generating Station, EPA Region II Administrator Hansler granted Orange and Rockland a adjudicatory hearing by letter dated June 6, 1975. In the case of plaintiff Con Edison's Indian Point Unit 2, EPA Region II Administrator Hansler granted Con Edison an adjudicatory hearing by letter dated May 8, 1975. In the case of plaintiff Power Authority's Indian Point Unit 3, EPA Region II Administrator Hansler granted Con Edison (the Power Authority's predecessor in title) an adjudicatory hearing by letter dated August 28, 1975. In each case, public notice of the granting of adjudicatory hearing was issued by defendant EPA.

24. Each public notice granting an adjudicatory hearing in each of the above cases allowed a hearing on (among other things) the contested conditions in each proposed permit which would have the effect of requiring installation of cooling towers at the respective generating units. The granting of the adjudicatory hearings on these permit conditions had the effect of staying and not issuing the contested conditions of the permits.

25. During the time period commencing on or about April 16, 1974 and extending to October 28, 1975, and while plaintiff's permit applications were being reviewed by EPA Region II, as described above, defendant NYDEC submitted to EPA under Section 402(b) of the Act a permit program established under State law to be administered by NYDEC for navigable

waters in New York State. Effective October 29, 1975, EPA determined that NYDEC's authority to administer New York State's permit program for discharges into all navigable waters within New York State was adequate to carry out the requirements of the Act, and EPA approved the permit program submitted by New York State. 40 Fed. Reg. 54462 (Nov. 24, 1975).

26. After EPA transferred the permit program to NYDEC, on October 29, 1975, EPA Region II, on August 4, 1976, requested assignment of an Administrative Law Judge for the adjudicatory hearings described above. Thereafter, an Administrative Law Judge ("EPA ALJ") was assigned to preside at the adjudicatory hearings, and the individual adjudicatory hearings were consolidated, for hearing purposes, by the EPA ALJ's order of February 25, 1977.

27. On February 22, 1977, at the initial pre-hearing conference held by the EPA ALJ, counsel for plaintiffs objected to continuance of the proceeding before EPA on the ground that jurisdiction over issuance of NPDES permits to plaintiffs had been transferred on October 29, 1975 to New York State by operation of law and that further proceedings by defendant EPA would only further delay the date upon which plaintiffs would be afforded the opportunity to be heard provided in §402 of the Act with respect to the proposed permit conditions effectively requiring cooling towers.

29. Thereafter, at plaintiffs' request, pursuant to EPA Rules, 40 C.F.R. §125.36(m)(1976), the EPA ALJ referred to the EPA General Counsel the legal question whether jurisdiction to issue these permits lies in EPA or NYDEC, and certain other legal questions raised by plaintiffs.

29. The General Counsel of EPA responded to the referred legal issue on jurisdiction, and the other referred issues, in Decision of the General Counsel on Matters of Law Pursuant to 40 C.F.R. §125.36(m), No. 63, dated July 29, 1977 and served on plaintiffs on August 11, 1977 ("OGC 63"), a copy of which is annexed as Exhibit A to the Complaint herein.

30. In OGC 63, the EPA General Counsel ruled that EPA's jurisdiction to issue the permit conditions contested by plaintiffs' in their requests for adjudicatory hearings was not transferred to NYDEC even though NPDES permit issuing authority was transferred to NYDEC on October 29, 1975, pursuant to Section 402(b) of the Act. OGC 63 at 1-3.

31. The EPA ALJ established a schedule for the administrative hearings now pending before EPA Region II, which called for the filing of plaintiffs' direct testimony on July 11, 1977, and for cross-examination of that testimony commencing on September 7, 1977; for EPA Region II staff to file its responsive testimony on November 1, 1977 (followed by cross-examination on the EPA staff testimony commencing on December 6, 1977); and for plaintiffs to file any rebuttal testimony on January 31, 1978 (followed by cross-examination thereon commencing on February 28, 1978).

32. Plaintiffs, while reserving their objection to EPA's retention of jurisdiction, filed their direct testimony in the EPA administrative hearings on July 11, 1977, in accord with the procedural schedule established by the EPA ALJ.

33. Hearings did not proceed on September 7, 1977. EPA Region II Staff, on August 17, 1977, moved the EPA ALJ to delay the time previously fixed for commencement of cross-

examination of the plaintiff's direct testimony with the major cross-examination of plaintiffs direct testimony to begin not earlier than February 13, 1978, a delay of seven months; and also to delay the other procedural dates previously fixed by the EPA ALJ. The EPA ALJ ruled that hearings will be postponed until December 6, 1977, when cross-examination on a limited portion of the direct testimony filed by plaintiffs will commence. Hearings will then adjourn until 1978.

34. Under the present procedural schedule for EPA hearings, cross examination will not commence until December 1977. No evidence has yet been officially received into the hearing record.

35. Plaintiffs are obligated under the Act to install whatever facilities might ultimately be determined to be required to carry out the purposes of the Act by no later than July 1, 1983. EPA contends that six cooling towers should be installed. Substantial time, on the order of 5 to 6 years, would be required to construct and install six cooling towers, and 3 to 4 years would be required as a minimum to build any one cooling tower.

36. Plaintiffs are entitled to an opportunity to be heard, before the agency having jurisdiction, on their contentions that cooling towers are not required by the Act.

37. Hearings should commence as soon as possible before the administrative agency authorized by law to determine whether cooling towers are required by the Act at plaintiffs' power plants. Unless the question of EPA jurisdiction is resolved now, the jurisdictional issue will remain as a

latent defect in all further proceedings before EPA. Future litigation of the jurisdictional question, and duplicative agency proceedings, are inevitable in the event the EPA proceedings continue without immediate determination of the jurisdiction question. Following final EPA decision, any party to the adjudicatory hearings will have the opportunity to appeal and to obtain judgment that EPA proceeded without jurisdiction and that EPA's decision was nugatory. Duplicative agency proceedings will delay a final decision upon which plaintiffs can rely.

38. Assuming that EPA's continued retention of jurisdiction is unlawful, continuance of the pending EPA proceedings would delay commencement of proceedings before NYDEC, to the detriment and substantial injury of plaintiffs, because there will not be sufficient time to complete proceedings before NYDEC, and to construct any facilities as NYDEC may ultimately determine are required to carry out the purposes of the Act, between the time NYDEC's determinations become final and the July 1, 1983 date established in the Act.

39. Assuming that EPA's retention of jurisdiction is unlawful, plaintiffs are now faced with the following alternatives, each of which would cause them substantial irreparable harm: a) Committing substantial amounts of money, at the consumers' expense, to comply with EPA's unissued permit conditions even though plaintiffs have not had an opportunity to be heard by the agency having jurisdiction; or b) risking heavy enforcement penalties after July 1, 1983 as a result of the lack of sufficient time before that date for plaintiffs to

construct such facilities, if any, as ultimately may be required following hearing before the agency having jurisdiction; or c) closing down one or more of their power plants, which would adversely affect the reliability of electric supply in New York, to the detriment of the public which relies on electric energy as a basic necessity.

Yours etc.,

LeBOEUF, LAMB, LEIBY & MacRAE

By 
 G.S. Peter Bergen
 A Member of the Firm
 Attorneys for Plaintiffs
 Office and P.O. Address
 140 Broadway
 New York, New York 10005
 Telephone: (212) 269-1100

Dated: New York, New York
 November 1, 1977

To: Clerk,
 United States District Court
 for the Southern District of New York

Ann Sidamon Eristoff, Esq.
 Assistant U.S. Attorney
 Attorneys for Defendants
 U.S. EPA, Douglas M. Costle,
 and Eckardt C. Beck
 One St. Andrews Plaza
 New York, New York

Paul S. Shemin, Esq.
 Assistant Attorney General
 Attorneys for Defendants N.Y.S.
 Department of Environmental
 Conservation and Peter A.A. Berle
 Two World Trade Center
 New York, New York 10047

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL UNION GAS & ELECTRIC CORPORATION; CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; ORANGE AND ROCKLAND UTILITIES, INC.; AND POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, DOUGLAS H. COSTLE, as Administrator, U.S. Environmental Protection Agency, ECKARDT C. BECK, Regional Administrator, Region II, U.S. Environmental Protection Agency, NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, and PETER A.A. BERLE, Commissioner, New York State Department of Environmental Conservation.

Defendants.

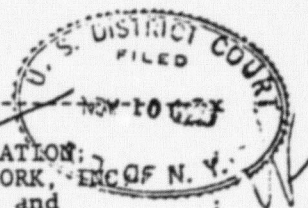
Plaintiffs' Statement Pursuant to
Local Rule 9(g)

LEBOEUF, LAMB, LEIBY & MACRAE
140 BROADWAY
NEW YORK, N. Y. 10005
212-269-1100

ATTORNEYS FOR
Plaintiffs

7

77-3238

LeBOEUF, LAMB, LEIBY & MacRAE
RECORDS DEPT. JA 266UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK,
ORANGE AND ROCKLAND UTILITIES, INC.; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

ORDER

- against -

: 77 Civ.
4870 (RLC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U. S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

Upon the annexed affidavit of Assistant United
States Attorney Anne Sidamon-Eristoff requesting an
extension of time for the federal defendant to answer the
plaintiffs' motion for summary judgment herein, and there
appearing good cause for the relief requested,

NOW, upon the application of Robert B. Fiske, Jr.,
United States Attorney for the Southern District of New York,
attorney for federal defendants, it is hereby,

ORDERED, that the time for federal defendants to
file their answer to the plaintiffs' motion for summary
judgment herein be extended to and including November 30, 1977.

Dated: New York, New York

November 9TH, 1977.

Robert B. Fiske, Jr.
UNITED STATES DISTRICT JUDGE

SERVED _____ BY _____
RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
LLL & MENTRY 11/10/77 BY *CP*

DOCUMENT No. *11*

_____ day of _____, 19 _____

NOTED ON:
MICROFILM
CA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.;
ORANGE AND ROCKLAND UTILITIES, INC.: and
POWER AUTHORITY OF THE STATE OF NEW YORK.

Plaintiffs,

AFFIDAVIT

- against -

77 Civ.
4370 (RLC)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U. S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

SS. :

ANNE SIDAMON-ERISTOFF, being duly sworn, deposes
and says:

1. I am an Assistant United States Attorney in the office of Robert B. Fiske, Jr., United States Attorney for the Southern District of New York, attorney for federal defendants herein, and have been assigned the defense of this action.

2. I make this affidavit to support a request pursuant to Rule 6(e), Fed. R. Civ. P., for an enlargement of time in which to respond to a motion for summary judgment filed by plaintiffs.

3. The complaint filed herein against federal and state defendants seeks an adjudication concerning the jurisdiction of the United States Environmental Protection Agency (EPA) to continue certain administrative proceedings relating to plaintiffs' National Pollution Discharge Elimination System (NPDES) permits which were initiated in March, 1975.

4. At present, the time for federal defendants to answer or move with respect to the complaint expires December 5, 1977.

5. On November 1, 1977 at 5:15 P.M. the federal defendants were served with a motion for summary judgment, with supporting affidavit, exhibits and 67-page memorandum of law. The return date for the motion is November 11, 1977.

6. I have requested the attorney for plaintiffs, G.S. Peter Bergen, Esq., to consent to an enlargement of time for the federal defendants to answer the summary judgment motion, but he has declined to so stipulate unless the federal defendants agree to file by November 23, 1977 any motion they may wish to make which raises the defense of lack of jurisdiction over the subject matter.

7. Initial review of plaintiffs' summary judgment motion papers indicates that there may be a serious question as to this court's subject matter jurisdiction, in view of the provisions for direct Court of Appeals review contained in Section 509(b) of the Federal Water Pollution Control Act of 1972, 33 U.S.C. §1369(b). The federal defendants intend to research the issue and then file any appropriate motions in timely fashion. However, the federal defendants cannot agree to a stipulation which constrains

JA 26
them to prepare and file any such a motion on an expedited schedule or be thereafter barred from making such a motion.

8. Preparation of the federal defendants' answer to plaintiffs' summary judgment motion will require the participation of both the regional and Washington offices of the EPA. Review of plaintiffs' factual allegations in order to determine the adequacy of plaintiffs' 9(G) Statement, and the preparation of the affidavits which may be needed in order to have a proper and full factual record before this Court on the summary judgment motion, will entail coordination with the state as well as the federal agencies. To prepare an adequate answer by November 10, 1977, within 9 days of service of the motion, would be exceedingly burdensome and difficult for the federal defendants. Plaintiffs apparently do not deny this nor did they suggest any compelling reason for adhering to the 10-day return date for their motion. Indeed, they appear willing to agree to a more reasonable time schedule for the summary judgment motion, but only in conjunction with a concession by defendants with regard to motions under Rule 12(b).

WHEREFORE, it is respectfully requested that this Court enlarge the time for Federal defendants to answer plaintiffs' motion for summary judgment from November 10th to and until November 30, 1977.

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ALINE SIDANON-ERISTOFF

Sworn to before me this

7th day of November, 1977.

RALPH I. LEE
Notary Public, State of New York
No. 41-2222333 Queens County
Jan 30, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LEBOEUF, LAMB, LEIBY & MACRAE
RECORDS DEPT.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.;
ORANGE AND ROCKLAND UTILITIES, INC.; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs,

AFFIDAVIT

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U.S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, and
PETER A.A. BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

Index No.
77 Civ. 4870
(R.L.C.)

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

JACOB FRIEDLANDER, being duly sworn, deposes and
says:

1. I am a member of the firm of LeBoeuf, Lamb,
Leiby & MacRae, attorneys for plaintiffs herein.
2. I make this affidavit in response to the request
by the federal defendants, pursuant to Fed. R. Civ. P. Rule
6(b), for enlargement of time in which to respond to plaintiffs'
motion for summary judgment.
3. Plaintiffs have advised counsel for the federal
defendants that plaintiffs would agree to extend the time
within which the federal defendants may answer plaintiffs'
motion for summary judgment until November 23, 1977 provided

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RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
LLL & MENTRY _____ BY CPS

11/9/77

DOCUMENT No. 10

that the federal defendants agree to assert by November 23, 1977 any defense said defendants may have on the ground of lack of jurisdiction over the subject matter.

4. The affidavit of Anne Sidamon-Eristoff, sworn to November 7, 1977, asserts that the federal defendants "cannot agree" to the stipulation proposed by plaintiffs, but states no reason why the federal defendants cannot assert their defenses as part of the federal defendants' answer to plaintiffs' summary judgment motion. In view of the fact that granting of plaintiffs' summary judgment motion would resolve the case on the merits it is highly unlikely that the federal defendants would not present all their defenses in answer to plaintiffs' summary judgment motion.

5. The Eristoff affidavit states conclusorily that time is needed for participation of and coordination with EPA (Region II) New York and Washington offices. Since the claims plaintiffs have brought before the Court were previously raised before both EPA Region II and the EPA General Counsel in Washington, adequate time for response should be available by November 23, 1977, three weeks after service of plaintiffs' summary judgment motion and five weeks after the filing of the complaint herein.

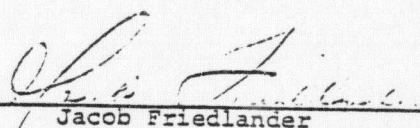
6. Plaintiffs face hearings before EPA, commencing December 6, 1977. Plaintiffs assert that EPA lacks jurisdiction to hold these hearings. The federal defendants obviously are aware of the EPA hearings but disregard them and the burden that participation in those hearings places upon plaintiffs. Even though the time before those EPA hearings commence is very short, plaintiffs are agreeable to affording the federal defendants until November 23. Each additional day of delay

that the federal defendants are granted to answer plaintiffs' summary judgment motion simply shortens the time available for the Court's consideration of this case before the EPA hearings commence.

7. Plaintiffs believe that jurisdiction is proper in this Court, and have discussed this matter at pages 48-52 of plaintiffs' November 1, 1977 "Memorandum in Support of Plaintiffs' Motion for Summary Judgment". Nonetheless, as a protective measure in view of the limitations period in Section 509(b) of the Federal Water Pollution Control Act, 33 U.S.C. §1369(b), plaintiffs have filed a Petition for Review, annexed hereto as Exhibit A, in the U.S. Court of Appeals for the Second Circuit. The transmittal letter to the Clerk included in Exhibit A explains plaintiffs' belief that jurisdiction over this action is properly in this Court.

WHEREFORE, plaintiffs respectfully request that the Court fix the following procedural schedule herein, which would bring the case before Court, fully developed, as of December 1, 1977:

- a. November 23, 1977 -- Answer to plaintiffs' summary judgment motion including any motions under Rule 12(b).
- b. December 1, 1977 -- Plaintiffs' reply to the above.


Jacob Friedlander

Sworn to before me this
9th day of November, 1977

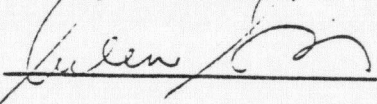

ARLENE SILVA
Notary Public, State of New York
No. 41-1977320
Qualified in Queens County
Commission Expires March 30, 1978

Exhibit A

LEBOEUF, LAMB, LEIBY & MACRAE

140 BROADWAY

NEW YORK, N.Y. 10005

TELEPHONE 212 269-1100

CABLE ADDRESS

LEBWIN, NEW YORK

TELEX: 423416

LEON A. ALLEN, JR.
 JOSEPH E. BACHELDER, III
 ERNEST S. BALLARD, JR.
 G. S. PETER BERGEN
 GEOFFREY D. C. BEST
 DAVID P. BICKS
 TAYLOR R. BRIGGS
 CHARLES N. BURGER
 THOMAS E. BURKE
 ROGER D. FELDMAN*
 EUGENE R. FIDELL*
 JACOB FRIEDLANDER
 DONALD J. GREENE
 JAMES A. GREER, II
 JOHN L. GROSE
 DOUGLAS W. HAWES
 CARL D. HOBELMAN
 MICHAEL IOVENKO
 JAMES F. JOHNSON, 4TH
 RONALD D. JONES
 LEX K. LARSON*
 GRANT S. LEWIS

CAMERON F. MACRAE
 CAMERON F. MACRAE, III
 GERARD A. MAHER
 SHEILA M. MARSHALL
 JAMES G. MCELROY
 JAMES P. McGRANERY, JR.*
 PHILIP PALMER McGUIGAN
 JAMES O'MALLEY, JR.
 J. MICHAEL PARISH
 JOHN A. RUDY
 PAUL G. RUSSELL
 HAROLD M. SEIDEL
 CHARLES P. SIFTON
 HALCYON G. SKINNER
 JOSEPH S. STRAUSS
 SAMUEL M. SUGDEN
 EUGENE B. THOMAS, JR.*
 LEONARDO M. TROSTEN*
 HARRY H. VOIGT*
 H. RICHARD WACHTEL
 GERARD P. WATSON

RANDALL J. LEBOEUF, JR. 1929-1975

ADRIAN C. LEIBY 1952-1976

1757 N STREET, N.W.

WASHINGTON, D.C. 20036

TELEPHONE 202 457-7300

CABLE ADDRESS

LEBWIN WASHINGTON, D.C.

TELEX: 440274

*RESIDENT PARTNERS WASHINGTON OFFICE

*NOT ADMITTED TO THE NEW YORK BAR

November 7, 1977

BY HAND

Hon. A. Daniel Fusaro
 Clerk
 U.S. Court of Appeals
 for the Second Circuit
 U.S. Courthouse
 Foley Square
 New York, New York 10007

Re: Central Hudson Gas & Electric Corp. et al.
v. U.S. Environmental Protection Agency

Dear Mr. Fusaro:

Enclosed for filing with the Court pursuant to Rule 15 of the Federal Rules of Appellate Procedure is an original and six copies of a joint Petition for Review filed on behalf of Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and the Power Authority of the State of New York ("Petitioners"). This Petition for Review is brought pursuant to §509 (b)(1) of the Federal Water Pollution Control Act. 33 U.S.C. §1369(b)(1) (Supp. V 1975).

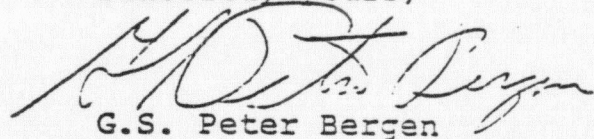
Petitioners are parties to administrative proceedings before Respondent, U.S. Environmental Protection Agency ("EPA") under the Federal Water Pollution Control Act. As indicated on the Certificate of Service annexed to the Petition for Review, and in accord with F.R.A.P.

Hon. A. Daniel Fusaro
November 7, 1977
Page 2

Rule 15(c), a copy of said Petition for Review has been served, by mail, upon all parties admitted to participate in the proceedings before EPA. Please note that both the New York State Department of Environmental Conservation and the New York State Attorney General are parties to the proceedings before EPA and that service of the Petition for Review has been made upon counsel for those parties.

Petitioners wish to advise the Court that they also filed, on October 5, 1977, a complaint in the United States District Court for the Southern District of New York (Index No. 77 Civ. 4870, R.L.C.) alleging that EPA's assertion of jurisdiction to issue certain contested permit conditions in the EPA administrative proceeding known as Docket No. II-C/WP-77-1 is improper under §402(c)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1342(c)(1) (Supp. V 1975). The instant Petition for Review is being filed now with this Court as a protective measure, due to the limitations period provided in §509(b)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1369(b)(1) (Supp. V 1975), to assure jurisdiction in this Court in respect of the matters set forth in the Petition in the event that the District Court should determine that the District Court lacks jurisdiction over plaintiffs' complaint by reason of §509(b)(1). Petitioners believe that the District Court is the proper forum for determination of their complaint, and would agree to withdraw the Petition following a final order (and any appeal from such order) by the District Court that it has jurisdiction over plaintiffs' complaint.

Sincerely yours,



G.S. Peter Bergen

GSPB/bk
Enclosures

5
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

JA 276

-----x
CENTRAL HUDSON GAS & ELECTRIC CORPORATION; : Docket No.
CONSOLIDATED EDISON COMPANY OF NEW YORK, :
INC.; ORANGE AND ROCKLAND UTILITIES, INC.; :
and POWER AUTHORITY OF THE STATE OF :
NEW YORK, :
Petitioners, :
-against- : PETITION FOR REVIEW
UNITED STATES ENVIRONMENTAL PROTECTION :
AGENCY, :
Respondent. :
-----x

Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc. and the Power Authority of the State of New York ("Petitioners") hereby petition the Court for review of the Decision of the General Counsel of the United States Environmental Protection Agency ("EPA") on Matters of Law Pursuant to 40 CFR §125.36(m) No. 63, issued August 11, 1977, to the extent such Decision determines that jurisdiction to issue certain contested permit conditions in the Environmental Protection Agency administrative proceeding known as Docket No. II-C/WP-77-1 has not been transferred by the Environmental Protection Agency to the New York State Department of Environmental Conservation ("NYDEC") by virtue of the transfer of permit

issuing authority to NYDEC in October 1975 pursuant to 33 U.S.C. §1342(c) (Supp. V 1975).

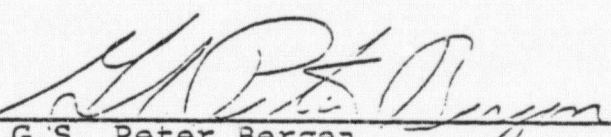
Petitioners further petition the Court for review of the determination of the EPA Administrator, effective October 29, 1975, transferring permit issuing authority to NYDEC, see 40 Fed. Reg. 54462 (Nov. 24, 1975), on the grounds of the Decision of the EPA General Counsel No. 63 referred to above, which was issued subsequent to ninety days after the transfer of permit issuing authority to NYDEC on October 29, 1975.

This petition for review is brought pursuant to 33 U.S.C. §1369(b)(1) (Supp. V 1975), §509(b)(1) of the Federal Water Pollution Control Act. Each Petitioner resides and transacts business in the Southern District of New York.

Respectfully submitted,

LeBOEUF, LAMB, LEIBY & MacRAE

By


G.S. Peter Bergen
Attorneys for Petitioners
Office and P.O. Address
140 Broadway
New York, New York 10005
(212) 269-1100

Dated: New York, New York
November 7, 1977

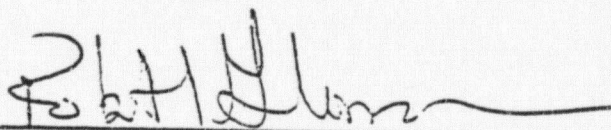
CERTIFICATE OF SERVICE

1. I am an attorney associated with the firm of LeBoeuf, Lamb, Leiby & MacRae, attorneys for Petitioners Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., and Power Authority of the State of New York and a member of the bar of this Court.

2. Contemporaneously with the filing of the foregoing Petition for Review, Petitioners are providing a true copy of its Petition to the Clerk for service on the Respondent, U.S. Environmental Protection Agency at the following address:

U.S. Environmental Protection Agency
Fourth and M Streets, S.W.
Washington, D.C. 20460

3. I hereby certify that I have this day served the foregoing Petition for Review on all parties which were admitted to participate in the proceeding before the agency, by mailing true copies thereof, first class mail, postage prepaid, to the addresses listed on the attached Official Service List.


Robert J. Glasser

Dated: New York, New York
November 7, 1977

Edward A. Azzaro, Esquire
Office of General Counsel
Federal Energy Regulatory Comm.
1 N. Capital St., N.E.
Washington, DC 20426

S. Peter Bergen, Esquire
Boeuf, Lamb, Leiby & MacRae
Broadway
New York, NY 10005

John Blake and
James L. Woods, Esquire
New York State Authority of State of N.Y.
Columbus Circle
New York, NY 10019

Bert K. Butzel, Esquire
Bel & Kass
Rockefeller Plaza
New York, NY 10020

Sherrine L. Farrell, Esquire
Attorney General
Commonwealth of Massachusetts
Ashburton Place
Boston, MA 02108

John Gardner
Floris Lane
Poughkeepsie, NY 12601

Allip H. Gitlen, Esquire
Standards & Compliance Bureau
State Dept of Env Cons
Wolf Road
Saratoga, NY 12233

Harry Gluckstern, Esquire
Enforcement Division
Region II
Federal Plaza
New York, NY 10007

Erison W. Grant, Esq.
Gold & Wilkie
Wall Street
New York, NY 10005

Mr. Thomas A. Griffin, Jr.
Executive Vice President
Orange & Rockland Utilities
One Blue Hill Plaza
Pearl River, NY 10965

Mr. John R. Jannarone
Vice President
Con. Ed. Co. of NY, Inc.
4 Irving Place
New York, NY 10005

Mr. Albert H. Lasday
37 King Drive
Poughkeepsie, NY 12603

Ms. Helen Lee
Regional Hearing Clerk
EPA, Region II
26 Federal Plaza
New York, NY 10007

Arthur Moskoff, Esq.
Town Attorney
Town of Haverstraw
41 New Main Street
Haverstraw, NY 10927

Mr. John D. O'Toole
Asst. Vice President
Con. Ed. Co. of NY, Inc.
4 Irving Place
New York, NY 10005

Mr. Charles E. Rider
Central Hudson Gas and
Electric Corp.
284 South Avenue
Poughkeepsie, NY 12602

Romano & Cohen
Prel Plaza
Orangeburg, NY 10962
ATTN: Joseph F. Romano, Esq.

Edward J. Sack, Esquire
Consolidated Edison Company
of New York, Inc.
4 Irving Place
New York, NY 10005

Ross Sandler, Esquire
(Natural Resources Defense
Council)
122 East 42nd Street
New York, NY 10017

Paul Shemin, Esquire
Asst. Attorney General
State of New York
2 World Trade Center
New York, NY 10047

William T. Westcott
Executive Vice President
Orange County Chamber
of Commerce
26 North Street
Middletown, NY 10940

Judge Thomas B. Yost
Environmental Protection Agency
345 Courtland Street, N.E.
Atlanta, Georgia 30303
Phone Number — 404/881-2

nse

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CENTRAL HUDSON GAS & ELECTRIC
CORPORATION, ET AL.,

Plaintiffs,

- against -

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, ET AL.,

Defendants.
-----X

AFFIDAVIT OF SERVICE
BY MAIL

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

STUART LESANSKY, being duly sworn, deposes and says
that:

He is over eighteen years of age, is not a party to this
action, is a licensed Process Server under License No. 727505
issued November 11, 1976 pursuant to § B32-450.0 of the Administra-
tive Code of the City of New York, and is employed by the firm of
LeBoeuf, Lamb, Leiby & MacRae, 140 Broadway, New York, New York.

On the 9th day of November, 1977, in the afternoon,
deponent caused the foregoing Affidavit of Jacob Friedlander to
be served upon the following in the above action by depositing
true copies thereof enclosed in securely sealed wrappers with
postage fully prepaid thereon in an official letterbox regularly
maintained under the exclusive care and custody of the United
States Postal Department and located in the lobby of 140 Broadway,
New York, New York, 10005:

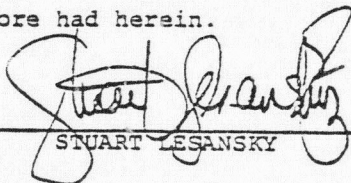
Anne Sidamon-Eristoff, Esquire
U.S. Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

ncy

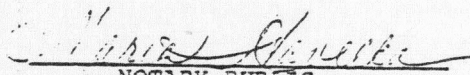
631

Paul Shemin, Esquire
Assistant Attorney General
State of New York
Room 4772
Two World Trade Center
New York, New York 10047

Deponent further states that at the time of such service he knew the foregoing attorneys to be the attorneys for the parties herein and their addresses to be the correct addresses by prior papers and proceedings heretofore had herein.


STUART LESANSKY

Sworn to before me this
9th day of November, 1977.


NOTARY PUBLIC

MARIA HAVELKA
Notary Public, State of New York
No. 41-4837978
Qualified in Queens County
Commission Expires March 30, 1978

77 Civ. 4870 (R.L.C.)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORPORATION; et al,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, ECKARDT C. BECK,
NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
and PETER A.A. BERLE,

Defendants.

AFFIDAVIT

LEBOEUF, LAMB, LEIDY & MACRAE
140 BROADWAY
NEW YORK, N. Y. 10005
212-233-1100

ATTORNEYS FOR
Plaintiffs

RECORDS DEPT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT
NOV 11 1977
S. D. OF N. Y.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK,
INC; ORANGE AND ROCKLAND UTILITIES, INC.; :
and POWER AUTHORITY OF THE STATE OF NEW
YORK, :

Plaintiffs, :

-against- :

UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, DOUGLAS M. COSTLE, as Adminis-
trator, United States Environmental
Protection Agency; ECKARDT C. BECK,
Regional Administrator, Region II, United :
States Environmental Protection Agency;
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL:
CONSERVATION, and PETER A. A. BERLE,
Commissioner, New York State Department :
of Environmental Conservation, :

Defendants. :

EX PARTE
ORDER
EXTENDING TIME
77 Civ. 4870
(RLC)

MICROFILM

NOV 11 1977

Upon the annexed affidavit of Assistant Attorney
General PAUL S. SHEMIN requesting an extension of time for the
state defendants to answer the plaintiffs' motion for summary
judgment herein, and there appearing good cause for the relief
requested,

NOW, upon the application of LOUIS J. LEFKOWITZ,
Attorney General of the State of New York, attorney for state
defendants, it is hereby,

ORDERED, that the time for state defendants to file
their answer to the plaintiffs' motion for summary judgment
herein be extended to and including November 30, 1977.

Dated: New York, New York
November 10, 1977

Robert H. Carter
U. S. D. J.

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RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
LIL & MENTRY 11/11/77

NOTED ON
M'INGO CLERK'S
CALENDAR

DOCUMENT No. 12

RECEIVED NOV 23 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LeBOEUF, LAMB, LEIC & MacRAE

RECORDS DEPT

CIRCULATE:	
GSPB	
JF	
RJG	
TEM	

CENTRAL HUDSON GAS & ELECTRIC CORPORA- :
TION; CONSOLIDATED EDISON COMPANY OF :
NEW YORK, INC; ORANGE AND ROCKLAND :
UTILITIES, INC; and POWER AUTHORITY OF :
THE STATE OF NEW YORK, :

Plaintiffs, :

ORDER TO SHOW CAUSE

-against- :

77 Civ. 4870 /
(RLC)

UNITED STATES ENVIRONMENTAL PROTECTION :
AGENCY, DOUGLAS M. COSTLE, as Admini- :
strator, U.S. Environmental Protection :
Agency, ECKARDT C. BECK, Regional :
Administrator, Region II, U.S. :
Environmental Protection Agency, NEW :
YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and PETER A. A. BERLE, :
Commissioner, New York State Department :
of Environmental Conservation, :

Defendants. :

TO
INTERVENE

Upon the annexed motion for intervention, the complaint
herein, the annexed affidavit of Albert K. Butzel and the Inter-
venor-Defendant's proposed answer, it is

ORDERED, that the defendants and each of them show
cause at a Motion Term of this Court, to be held in Room ¹¹⁰⁶ ~~2903~~ of
the United States Courthouse, Foley Square, New York, New York on
the 29th day of November, 1977, at ^{9:30 a.m.} ~~10~~ o'clock in the forenoon of
that day, or as soon thereafter as counsel can be heard, why this
Court should not grant the motion for intervention set forth in the
papers herein; and it is

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RECEIVED 11/23/77 BY SKL
☒ HAND ☐ MAIL
FILED BY _____
L.L.S. MENTY BY CPS

DOCUMENT No. 13 #

FURTHER ORDERED, that copies of this Order to Show Cause and the papers upon which it is granted, be personally served upon the Plaintiffs and Defendants or their Attorneys by 5:00 P.M. on November 23 1977, and that such service be deemed good and sufficient.

Dated: New York, New York
November 23, 1977

/s/ ROBERT L. CARTER
U.S.D.J.

ED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
CENTRAL HUDSON GAS & ELECTRIC CORPORA- :
TION; CONSOLIDATED EDISON COMPANY OF :
NEW YORK, INC; ORANGE AND ROCKLAND :
UTILITIES, INC; and POWER AUTHORITY OF :
THE STATE OF NEW YORK, :

Plaintiffs, :

MOTION FOR INTERVENTION

-against- :

77 Civ. 4870
(PLC)

UNITED STATES ENVIRONMENTAL PROTECTION :
AGENCY, DOUGLAS M. COSTLE, as Admini- :
strator, U.S. Environmental Protection :
Agency, ECKARDT C. BECK, Regional :
Administrator, Region II, U.S. :
Environmental Protection Agency, NEW :
YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and PETER A. A. BERLE, :
Commissioner, New York State Department :
of Environmental Conservation, :

Defendants. :

----- x
The Hudson River Fishermen's Association, Inc. (the
"Applicant") hereby moves this Court, pursuant to Rule 24 of the
Federal Rules of Civil Procedure, for an Order permitting it to
intervene in this action as a party defendant in order to assert
the defenses set forth in the Intervenor-Defendent's Proposed
Answer, a copy of which is attached hereto.

The grounds for this motion are that the Applicant has a
direct interest in the subject of this action and is so situated

that the disposition of this matter will impair its ability to protect that interest, and further that Applicant's defenses and the action have common, if not identical, questions of law and fact.

Dated: New York, New York
November 23, 1977

BUTZEL & KASS

By Albert K. Butzel
Albert K. Butzel

Attorneys for Applicant
45 Rockefeller Plaza - 2350
New York, New York 10020
Tel.: (212) 765-1800

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
CENTRAL HUDSON GAS & ELECTRIC CORPORA- :
TION; CONSOLIDATED EDISON COMPANY OF :
NEW YORK, INC; ORANGE AND ROCKLAND :
UTILITIES, INC; and POWER AUTHORITY OF :
THE STATE OF NEW YORK, :

Plaintiffs, :

-ag - :

AFFIDAVIT IN SUPPORT
OF ORDER TO SHOW CAUSE
AND MOTION FOR INVTER-
VENTION

77 Civ. 4870
(RLC)

UNITED STATES ENVIRONMENTAL PROTECTION :
AGENCY, DOUGLAS M. COSTLE, as Admini- :
strator, U.S. Environmental Protection :
Agency, ECKARDT C. BECK, Regional :
Administrator, Region II, U.S. :
Environmental Protection Agency, NEW :
YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and PETER A. A. BERLE, :
Commissioner, New York State Department :
of Environmental Conservation, :

Defendants. :

----- x
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ALBERT K. BUTZEL, being duly sworn, deposes and says:

1. I am a partner in the firm of Butzel & Kass, attorneys for the Hudson River Fishermen's Association, Inc. ("HRFA"), which seeks to intervene as a party defendant in this action. I am familiar with the relevant facts and submit this affidavit in support of HRFA's motion to intervene.

2. This action concerns the authority of the United States Environmental Protection Agency ("EPA") to carry out partially completed permit proceedings under the Federal Water Pollution Control Act (the "Act") which may require the plaintiff utilities herein (the "Utilities") to install closed-cycle cooling systems on four major power plants operated by the Utilities on the Hudson River. In this action, the Utilities contend that EPA lost all jurisdiction, even over partially completed proceedings, when the New York State Department of Environmental Conservation ("NYSDEC") initiated its permit program under the Act in 1975.

3. The Utilities' apparent motivation for commencing this action is that they disagree with EPA's tentative conclusion that closed-cycle cooling is required to protect the waters and the aquatic life of the Hudson. They hope to gain two things through this litigation: First, time, since completion of proceedings to consider closed-cycle cooling by NYSDEC would likely take several years more than the completion of EPA's proceedings; and second, a different result, since they may be more successful in convincing a state agency that once-through cooling is adequate than they were in convincing EPA.

4. HRFA has a vital interest in this action and one which may, as a practical matter, be put to a severe disadvantage if its intervention is denied. HRFA has for many years been concerned, as its name would imply, with the protection and enhancement of the commercial and sports fisheries of the Hudson River.

It is a non-profit conservation organization incorporated in New York in 1966, and has a membership of approximately 750, including a large number of sports and commercial fishermen who actively fish the Hudson and, in some instances, depend upon it for their livelihood. The power plants at Indian Point, Bowline and Roseton which are the underlying subject of this action are currently impacting adversely upon the Hudson's fisheries resources, drawing in and killing millions upon millions of eggs, larvae and other early life stages of striped bass and other species, and thus threatening the fisheries with serious reductions, if not demise. As such, the interests of HRFA and its members will be vitally affected by the EPA proceedings since it is through closed-cycle cooling that this damage can best be minimized. However, no such requirement can or will be imposed until the hearings are completed; and thus every day of delay further jeopardizes HRFA's interests.

5. Nor has HRFA sat by up to now. To the contrary, it was formed for the specific purpose of seeking to protect the Hudson River fisheries (and the spawning and nursery grounds of such valuable species as the striped bass and shad) from power plant impacts that were already being threatened. As early as 1967, HRFA intervened to present testimony before the Federal Power Commission on the dangers posed by the proposed Storm King Plant. In 1971 and thereafter, HRFA has been the leading organization in bringing to public attention, and seeking to mitigate, the damage to

the Hudson fisheries occurring at the Indian Point, Bowline and Roseton plants. As an intervenor before the Atomic Energy Commission (now the Nuclear Regulatory Commission), HRFA presented detailed testimony which led (in conjunction with evidence presented by the NRC staff) to early conditional orders (still in abeyance) for closed-cycle cooling systems at Indian Point. In addition, through actions in this Court, HRFA has forced the preparation of environmental impact statements for Bowline and Roseton that may yet require closed-cycle cooling; and in connection with the Storrs King proceeding, HRFA has continued its activity, as evidenced by the Second Circuit's opinion in Hudson River Fishermen's Association v. Federal Power Commission, 498 F.2d 827 (1974).

6. Finally, and perhaps most pertinently, HRFA has been active in the administrative proceedings which the Utilities now challenge in this action. When draft permits were issued for the plants in question, HRFA submitted detailed comments and, we believe, helped to activate EPA to address the ecological damage that was threatened and to ultimately order closed-cycle cooling. When, thereafter, final permits were issued, but the Utilities asked for and obtained an adjudicatory hearing before EPA, HRFA, in accordance with EPA's rules, formally filed for intervention as a party and was granted that right by EPA in letter approvals forwarded in 1975. Since that time, HRFA has been pressing EPA to

move ahead, and has been actively involved in each phase of the administrative proceedings. Thus, its interests have not merely been "in the air", but have been actively pursued throughout.

7. As already noted, if the Utilities' suit is successful, any requirement for closed-cycle cooling at the Indian Point, Bowline and Roseton plants will, as a practical matter, be postponed for several years. It is not possible to determine in advance the exact extent of this delay; however, based on the time that it has taken EPA to move from the permit phase to hearings, and given the Utilities' ability to raise continuing procedural points (e.g., the necessity for a new State notice, the claimed need to issue a new State permit, the likely assertion that the State must make a new tentative evaluation of its own, etc.), it is quite possible, if not likely, that this delay could run two or three years or more. Such a delay will clearly and substantially affect and prejudice the interests of HRFA and its members, since all during this period, the plants will continue to operate without closed-cycle cooling; the fish of the Hudson will continue to be sucked in and ground up; and the fisheries stock will continue to diminish, potentially to irrecoverable levels.

8. The Utilities, of course, contend that no substantial harm will occur. This claim is premised, however, on the assertion that no significant delay will result -- and this is far from the truth. Furthermore, the Utilities' position relies on the advice of its paid consultants; the Government's experts, in

contrast, with whom HRFA concurs, foresee major damage if the plants continue to operate without once-through cooling. Given this opinion, and the very real likelihood, if not certainty, of substantial harm, it would be unfair to deny HRFA the opportunity to defend its interests in the pending Court case which, if decided favorably to the Utilities, would directly affect the fisheries of which HRFA's members depend for sport and commerce.

9. In addition, HRFA's interests are not adequately represented by the defendants in this suit, all of whom are government agencies or officials. This is not to demean the agencies. However, the facts are that it is HRFA and the membership it represents which constitute the persons who actually fish the Hudson. The agencies, by contrast, have no such direct interest. Furthermore, in the history of fisheries protection along the Hudson it has been HRFA that has had to lead the way and prod the Federal and State agencies to action. Even today, EPA and NYSDEC tend to view the proceedings with a somewhat more leisurely attitude than the Fishermen; and this is after five years have already passed since the Federal Water Pollution Control Act directed EPA to impose protective requirements. In these circumstances, HRFA's participation is particularly important if there is not to be further delay.

10. Finally, it must be recognized that HRFA's interests are different from EPA's and NYSDEC's. These agencies' paramount

concern must be with their overall regulatory obligations, and in that context the factors that affect their judgment are bound to turn on more than the impacts on the Hudson River fisheries. HRFA, on the other hand, has as its principal (if not exclusive) goal the prompt safeguarding of those fisheries -- period. It was, of course, for precisely this reason that HRFA intervened (and was permitted to intervene) in the EPA proceedings; and now, faced with a challenge to those proceedings brought in this Court, it is respectfully submitted that HRFA is equally entitled to intervene in this action.

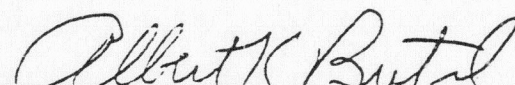
11. In accordance with Rule 24(c) of the Federal Rules of Civil Procedure, there is annexed hereto and submitted herewith HRFA's proposed answer setting forth the defenses for which intervention is sought.

12. This motion is made by order to show cause rather than notice of motion because a motion for summary judgment has already been made by plaintiffs, returnable November 30, 1977, and unless HRFA's motion is returnable by that date, HRFA will be unable to defend its interests and could be irreparably prejudiced.

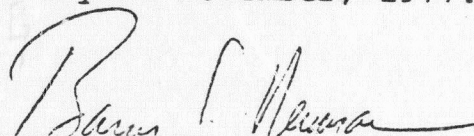
13. No previous application for the relief requested herein has been made in this or any other Court.

WHEREFORE, for the reasons set forth above, the motion of the Hudson River Fishermen's Association, Inc. should be granted

and it should be permitted to intervene as a party defendant in this action.


Albert K. Butzel

Sworn to before me this
23rd day of November, 1977.


Notary Public

Barry S. Newman
Notary Public, State of New York
No. 31-46027-1
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
CENTRAL HUDSON GAS & ELECTRIC CORPORA- :
TION; CONSOLIDATED EDISON COMPANY OF :
NEW YORK, INC; ORANGE AND ROCKLAND :
UTILITIES, INC; and POWER AUTHORITY OF :
THE STATE OF NEW YORK, :

Plaintiffs, :

INTERVENOR-DEFENDANT'S
PROPOSED ANSWER

-against- :

77 Civ. 4870
(RLC)

UNITED STATES ENVIRONMENTAL PROTECTION :
AGENCY, DOUGLAS M. COSTLE, as Admini- :
strator, U.S. Environmental Protection :
Agency, ECKARDT C. BECK, Regional :
Administrator, Region II, U.S. :
Environmental Protection Agency, NEW :
YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and PETER A. A. BERLE, :
Commissioner, New York State Department :
of Environmental Conservation, :

Defendants, :

-and- :

HUDSON RIVER FISHERMEN'S ASSOCIATION, :
INC., :

Intervenor-Defendant. :

----- x

The Hudson River Fisherman's Association, Inc., by its attorneys, for its answer to the complaint herein, alleges as follows:

1. Denies, on information and belief, the allegations set forth in paragraphs "1", "50", "51", and "54" of the complaint.

2. Denies knowledge or information sufficient to form a belief as to the allegations set forth in paragraphs "2", "16", "26", "27", and "32", of the complaint.

3. Denies the allegations set forth in paragraphs "18" "20", "21", "24" and "25" of the complaint, and respectfully refers the Court to the legislation referred to in such paragraphs.

4. Denies the allegations set forth in paragraphs "29", "30", and "31" of the complaint, and respectfully refers the Court to the Notices of Issuance of Final Determination and the National Pollutant Discharge Elimination System Permits referred to in such paragraphs.

5. Denies the allegations contained in the last sentence of paragraph "33" of the complaint, and denies knowledge or information sufficient to form a belief as to the other allegations in said paragraph.

6. Denies the allegations set forth in paragraph "35" of the complaint, and respectfully refers the Court to the letters and notices referred to in such paragraph.

7. Denies the allegations set forth in the last sentence of paragraph "36" of the complaint, and denies knowledge or information sufficient to form a belief as to the other allegations in said paragraph.

8. Denies the allegations contained in the first clause of paragraph "37" of the complaint and admits the balance.

9. Denies the allegations set forth in paragraph "41" of the complaint, and respectfully refers the Court to the Decision of the General Counsel on Matters of Law, No. 63, referred to in such paragraph.

10. Admits the allegations set forth in first sentence of paragraph "44" of the complaint, but denies the other allegations as stated.

11. Admits the allegations set forth in the first two sentences of paragraph "46" of the complaint; and denies the allegations set forth in the third sentence of said paragraph.

12. Denies the allegations set forth in paragraphs "45", "47", "48", "49", "52", "53" and "55" of the complaint.

AS AND FOR A FIRST
AFFIRMATIVE DEFENSE

13. The Court lacks jurisdiction over the subject matter of this action.

AS AND FOR A SECOND
AFFIRMATIVE DEFENSE

14. The complaint fails to state any cause of action upon which the relief requested therein may be granted.

AS AND FOR A THIRD
AFFIRMATIVE DEFENSE

15. Neither the Federal Water Pollution Control Act, as amended, nor any other statute, regulation or law of the United

States, prohibits the defendants from taking any action or promulgating any order complained of by plaintiffs herein.

AS AND FOR A FOURTH
AFFIRMATIVE DEFENSE

16. In taking the actions and promulgating the orders complained of by plaintiffs herein, defendants acted pursuant to and within the mandate of the Federal Water Pollution Control Act, as amended, and within their regulatory authority.

AS AND FOR A FIFTH
AFFIRMATIVE DEFENSE

17. Plaintiffs are barred by laches from maintaining this action in that, among other things, they had notice of the transfer of the permit program about which they complain as early as October, 1975, but gave no notice of their position until February, 1977 and did not commence this action until October, 1977. Further, in the interim, defendants and others, including the Hudson River Fishermen's Association, Inc., relied to their detriment on the continuation of proceedings before the U.S. Environmental Protection Agency.

AS AND FOR A SIXTH
AFFIRMATIVE DEFENSE

18. Plaintiffs have waived their right to object to the actions of defendants set forth in the complaint, in that,

among other things, plaintiffs participated in proceedings before the U.S. Environmental Protection Agency for a period of approximately 15 months after learning of the permit program of the New York State Department of Environmental Conservation without questioning the right of the U.S. Environmental Protection Agency to conduct such proceedings.

WHEREFORE, the Hudson River Fisherman's Association, Inc. requests judgment dismissing the complaint, denying all relief requested by plaintiffs therein, and granting such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
November 23, 1977

BUTZEL & KASS

By Albert K. Butzel
Albert K. Butzel

Attorneys for Intervenor-
Defendant
45 Rockefeller Plaza - 2350
New York, New York 10020
Tel.: (212) 765-1800

Index No. 77 Civ. 4870 (RLC) Year 19

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORPORATION; CONSOLIDATED EDISON
COMPANY OF NEW YORK, INC; ORANGE
AND ROCKLAND UTILITIES, INC; and
POWER AUTHORITY OF THE STATE OF
NEW YORK,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Admini-
strator, Region II, U.S. Environ-
mental Protection Agency, NEW YORK
STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and PETER A. A.
BERLE, Commissioner, New York
State Department of Environmental
Conservation,

Defendants.

ORDER TO SHOW CAUSE
MOTION TO INTERVENE, AFFIDAVIT,
ETC.

BUTZEL & KASS
Attorneys for
Hudson River Fishermens Association
Inc.
Address & Post Office Address, Telephone
45 ROCKEFELLER PLAZA
NEW YORK, NEW YORK 10020
(212) 768-1600

COPY RECEIVED

LOHMEYER, L. S. LIND & MARRAS

by hand by

Stuart J. Landry

AT 4:45 PM ON Nov. 23, 1977

JA 301

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

CENTRAL HUDSON GAS & ELECTRIC CORPORATION; :
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.; :
ORANGE AND ROCKLAND UTILITIES, INC.; and :
POWER AUTHORITY OF THE STATE OF NEW YORK, :

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, :
DOUGLAS M. COSTLE, as Administrator, U.S. :
Environmental Protection Agency, :
ECKARDT C. BECK, Regional Administrator, :
Region II, U.S. Environmental Protection :
Agency, :
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, and :
PETER A.A. BERLE, Commissioner, New York :
State Department of Environmental :
Conservation, :

Defendants.

-----x

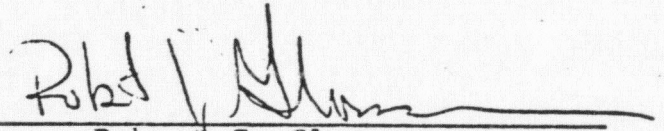
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Robert J. Glasser being duly sworn deposes
and says:

1. I am associated with the firm of LeBoeuf,
Lamb, Leiby & MacRae, attorneys for plaintiffs herein
and I am familiar with the facts described below. I
make this affidavit in support of Plaintiffs' "Memorandum
in Opposition to Application for Leave to Intervene by
Hudson River Fishermen's Association".

2. At the time this action was instituted, a copy of the complaint herein was served by mail upon counsel for Hudson River Fishermen's Association, and all other parties to the pending EPA NPDES administrative hearings (EPA Docket No. II-C/WP-77-1), under cover of letter dated October 5, 1977.

3. A copy of Plaintiffs' Motion for Summary Judgment and Memorandum in Support of Plaintiffs' Motion for Summary Judgment (November 1, 1977) was served upon counsel for Hudson River Fishermen's Association by mail on November 4, 1977.


Robert J. Glasser

Sworn to before me this

~~29th~~ day of November, 1977



Notary Public

ARLENE SILVA
Notary Public, State of New York
No. 41-8997330
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
: CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
: CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.;
: ORANGE AND ROCKLAND UTILITIES, INC.; and
: POWER AUTHORITY OF THE STATE OF NEW YORK,
: Plaintiffs, :

-against-

: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, : Index No.
: DOUGLAS M. COSTLE, as Administrator, U.S. : 77 Civ. 4870
: Environmental Protection Agency, : (R.L.C.)
: ECKARDT C. BECK, Regional Administrator, :
: Region II, U.S. Environmental Protection :
: Agency, : AFFIDAVIT OF
: NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL : SERVICE BY MAIL
: CONSERVATION, and :
: PETER A.A. BERLE, Commissioner, New York :
: State Department of Environmental :
: Conservation, :
: Defendants. :

-----x
STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

STUART LESANSKY, being duly sworn, deposes and says
that:

He is over eighteen years of age, is not a party to
this action, and is employed by the firm of LeBoeuf, Lamb, Leiby &
MacRae, 140 Broadway, New York, New York.

On the 28th day of November, 1977, in the afternoon,
deponent served the foregoing Affidavit of Robert J. Glasser and
Plaintiffs Memorandum in Opposition To Intervention upon the
following in the above action by depositing true copies thereof
enclosed in securely sealed wrappers with postage fully prepaid

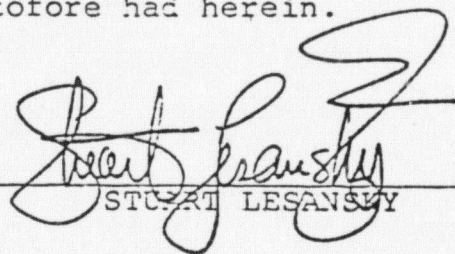
in an official letterbox regularly maintained under the exclusive care and custody of the United States Postal Department and located in the lobby of 140 Broadway, New York, New York, 10005:

Anne Sidamon-Eristoff, Esq.
U.S. Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007

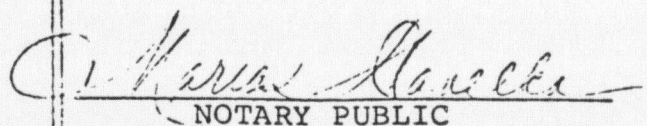
Paul Shemin, Esq.
Assistant Attorney General
State of New York
Room 4772
Two World Trade Center
New York, New York 10047

Albert K. Butzel, Esq.
Attorney for the
Hudson River Fisherman's
Association, Inc.
45 Rockefeller Plaza
Room 2350
New York, New York 10020

Deponent further states that at the time of such service he knew the foregoing attorneys to be the attorneys for the parties herein and their addresses to be the correct addresses by prior papers and proceedings heretofore had herein.


STUART LESANSKY

Sworn to before me this
28th day of November, 1977.


NOTARY PUBLIC

MARIA HAVELKA
Notary Public, State of New York
No. 41-4837978
Qualified in Queens County
Commission Expires March 30, 1978

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORPORATION, et al,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, ECKARDT C. BECK, NEW
YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,
and PETER A.A. BERLE,

Defendants.

AFFIDAVIT

LEBOEUF, LAMB, LEIBY & MACRAE

140 BROADWAY

NEW YORK, N. Y. 10005

212-269-1100

ATTORNEYS FOR

Plaintiffs

JA 306

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RECORDS DEPT.

CENTRAL HUDSON GAS & ELECTRIC CORPORATION;
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.;
ORANGE AND ROCKLAND UTILITIES, INC.; and
POWER AUTHORITY OF THE STATE OF NEW YORK,

Plaintiffs.

-against-

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
DOUGLAS M. COSTLE, as Administrator, U.S.
Environmental Protection Agency,
ECKARDT C. BECK, Regional Administrator,
Region II, U.S. Environmental Protection
Agency,
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, and
PETER A. A. BERLE, Commissioner, New York
State Department of Environmental
Conservation.

Defendants.

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

LANGDON MARSH, being duly sworn, deposes and says:

I am the First Deputy Commissioner of the defendant New York State Department of Environmental Conservation. I have been employed by the Department since 1974, first as Counsel and later as General Counsel. In 1975 as part of my duties I was intimately involved with the negotiations which culminated in the Memorandum of Agreement Between the State of New York Department of Environmental Conservation ("Department")

SERVED _____ BY _____
RECEIVED _____ BY _____
☐ HAND ☐ MAIL
FILED _____ BY _____
LLL & MENTRY _____ BY *CPS*

DOCUMENT No. 16

and the United States Environmental Protection Agency ("USEPA") dated October 28, 1975 (the "Agreement"), a copy of which is annexed hereto. I make this affidavit in opposition to the motion of plaintiffs herein for summary judgment.

The Agreement executed by this Department and USEPA was intended to provide for the orderly transfer of responsibility for the regulation of pollutant discharges from USEPA to the State of New York, pursuant to §402(b) of the Federal Water Pollution Control Act (the "Act").

Section 402(c) of the Act provides that USEPA shall "suspend the issuance of permits" under §402(a) thereof upon a determination by the Administrator that the state program complies with the requirements of §402(b). Article 1 of the Agreement implements this section. Paralleling §402(c), Article I refers to the "issuance" of permits. At the time of negotiations, all parties to the Agreement understood this term to mean the issuance by USEPA of a proposed permit, pursuant to 40 C.F.R. §125.35. These proposed permits become final if adjudicatory hearings are not requested, and if such a hearing were requested, USEPA, as the agency that imposed the challenged terms and conditions, was to be the one to defend them.

The position of plaintiffs that the state must take over jurisdiction of the permit proceedings relating to their

power plants is particularly anomalous in view of plaintiffs' insistence that USEPA had a duty to disclose the bases of the terms and conditions of its proposed permits at the time of their issuance (see Issue of Law No. VIII in Decision No. 63 of USEPA's General Counsel, p. 28, annexed to the complaint herein as Appendix "A"). Plaintiffs would have USEPA specify in detail the bases of their terms and conditions, and an entirely different agency defend those terms and conditions. The splitting of governmental responsibility as suggested by plaintiffs would raise numerous administrative, legal and evidentiary problems, a fact accepted by the parties to the Agreement when the terms thereof were formulated.

Indeed, had USEPA interpreted §402(c) as plaintiffs suggest, this Department might well have not assumed jurisdiction over the federal program. DEC does not have the staff to hold hearings on the many permits "issued" (i.e., proposed by EPA and subject to adjudicatory hearings), challenged by dischargers, nor the capability to investigate the facts underlying EPA's determinations as embodied in such permits. If the terms of transfer contemplated by the Agreement are overturned by this Court, the state may be compelled to rescind the Agreement pursuant to Article VIII thereof, for this Department has neither the funding nor the staff to absorb the increased workload that would be necessitated by such a determination.

WHEREFORE, plaintiffs' motion for summary judgment should be denied.

Langdon Marsh
LANGDON MARSH

Sworn to before me this
29 day of November, 1977.

Philip Titlen
Notary Public

PHILIP TITLEN
Notary Public, State of New York
Qualified in Columbia County
02-610075-1
Commission Expires March 30, 1979

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

WHEREAS, the Federal Water Pollution Control Act Amendments of 1972 ("the FWPCA") expresses the policy of Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution;

WHEREAS, the State of New York has had enforceable water quality standards since 1950 and has administered a State discharge permit system since 1962, and since September 1, 1973 the State of New York ("the State") has conducted a State Pollution Discharge Elimination System ("SPDES") permit program pursuant to article 17, title 8 of the Environmental Conservation Law ("the ECL");

WHEREAS, pursuant to the FWPCA, the Administrator of the United States Environmental Protection Agency ("the Administrator" and the "Agency", respectively) is authorized to establish and administer a National Pollution Discharge Elimination System ("NPDES") for discharges of pollutants into navigable waters of the United States;

WHEREAS, the FWPCA allows the Administrator to suspend the issuance of federal discharge permits within any State which desires to administer its own permit program for discharges into navigable waters within its jurisdiction in accordance with a program meeting the criteria set forth in §402 of the FWPCA and regulations set forth in 40 CFR Part 124 "State Program Elements Necessary for Participation in the National Pollutant Discharge Elimination System" ("the State Program Elements");

WHEREAS, the State has promulgated regulations under article 17, title 8 of the ECL, and has taken other necessary steps in order to meet said criteria;

WHEREAS, the State, acting through its Governor, has submitted an application for approval by the Administrator of the State's pollutant discharge elimination system permit program;

WHEREAS, the Regional Administrator, Region II, United States Environmental Protection Agency ("the Regional Administrator") and the Commissioner, Department of Environmental Conservation, State of New York, hereinafter (the "Commissioner" and the "Department," respectively) wish to set forth their mutual understanding as to procedural and other arrangements for coordinating the administration of the State's pollutant discharge elimination system permit program with the NPDES program following approval by the Administrator of the State's program;

WHEREAS, the Administrator has promulgated regulations, the State Program Elements, which call for, among other things, the establishment, agreement between the Regional Administrator and the Commissioner, of procedures for transmission of certain data and other information concerning the NPDES program to the Regional Administrator;

WHEREAS, the Department acting through the Commissioner is authorized pursuant to article 17, title 8 ECL to administer an NPDES program on behalf of the State, and to enter into agreements with the Regional Administrator incidental to that authority;

NOW, THEREFORE, the parties to this agreement, in consideration of the covenants and stipulations set out herein, agree as follows:

ARTICLE I

TRANSFER OF AUTHORITY

1. The Regional Administrator and the Commissioner hereby agree that the Regional Administrator shall be responsible for the issuance of substantially all NPDES permits based upon applications which have been sent to the Department for certification by the State pursuant to Section 401 of the FWPCA for which Public Notice requests have been made by the Department.
2. After the date upon which the Administrator approves the State's permit program, all new applications for NPDES permits shall be directed to the Commissioner.
3. After the date upon which the Administrator approves the State's permit program, the Commissioner shall have sole responsibility for the issuance of NPDES permits within the State of New York, and shall have primary responsibility for the enforcement of the terms or conditions of all NPDES permits within the State of New York, except as follows: the Regional Administrator will retain the responsibility for compliance monitoring inspections of major dischargers prior to June, 1975 pursuant to currently existing agreements with the Commissioner and primary responsibility for the enforcement of permits issued by the Regional Administrator for a six (6) month period subsequent to the date upon which the Administrator approves the State's permit program. Thereafter the Regional Administrator retains the right, pursuant to Section 308 of the FWPCA, to conduct such compliance monitoring inspections of NPDES permittees as the Regional Administrator may deem necessary. Further, all adjudicatory hearings, hearings with respect to Section 316 of the FWPCA, citizen suits or other litigation concerning NPDES permits issued by the Regional Administrator prior to the date upon which the Administrator approves the State's permit program will be defended by the

Regional Administrator with such participation by the Commissioner as may be appropriate to each specific case in dispute. Any modifications to the terms and conditions of an NPDES permit issued by the Regional Administrator because of deficiency in certification requirements before the date upon which the Administrator approves the State's permit program, or which is required as the direct result of any adjudicatory hearing, Section 316 hearing, citizen suit or other litigation pending as of the date upon which the Administrator approves the State's permit program will be made by the Regional Administrator; provided, however, that the State retains its right of certification of any such modifications under Section 401 of the FWPCA. All other modifications to any NPDES permit issued by the Regional Administrator will be made by the Commissioner in accordance with Article VII of this Agreement.

4. Nothing in this Agreement shall pertain to NPDES permits issued to federal facilities, or certificates of environmental compatibility and public need to be issued to major steam electrical generating facilities by the New York State Board on Electric Generation Siting and the Environment, unless such Siting Board specifically agrees in writing to be bound hereby.

5. Specific workload responsibilities to be undertaken by EPA and DEC covering the identification and orderly transfer of unprocessed applications on file with EPA to the Department will be identified in a separate agreement and shall foster an orderly transition of such responsibilities.

ARTICLE II

RECEIPT AND USE OF DATA

1. The Regional Administrator hereby agrees that no later than sixty (60) days prior to the date upon which the Administrator approves the State's permit program, the Regional Administrator shall provide to the Commissioner a list of all valid NPDES or Refuse Act permits issued by him or by the United States Army Corps of Engineers for all discharges into the navigable waters of the State of New York. This list shall include the permit number, the date issued, the term for which the permit is valid, the name and address of the permittee, the date the permit expires and recorded actions taken for noncompliance with all permit requirements when copies of such actions have not previously been submitted to the Department. If the Commissioner, in reviewing such list, finds that his files are incomplete with respect to such permit, he shall so notify the Regional Administrator, and the Administrator shall ensure that a copy of the final permit, including all changes, modifications and corrections thereto has been furnished to the Commissioner within sixty (60) days of such notification. In addition, the Regional Administrator

shall provide to the Commissioner a list of all applications received together with their basic status, i.e., untouched, complete, draft permits and/or PSTs complete, in Public Notice phase, Public Notice phase complete.

2. No later than thirty (30) days after the date upon which the Administrator approves the State's permit program, the Regional Administrator will submit to the Commissioner a complete list of all nonfilers known to the Regional Administrator within the State of New York. This list shall include the name and address of the nonfiler, and any information available relative to the nonfiler's type of operation and steps taken by the Regional Administrator to obtain permit applications from said nonfilers and current status of each case.

3. The Regional Administrator agrees that he will maintain all the files containing the documents upon which NPDES permits issued by him were based in a readily accessible condition and that employees of the Department will be permitted unlimited access to such documents on five (5) days prior notice to the Regional Administrator or his designee. Any documents required by the Department will be furnished or reproduced by EPA promptly and without charge to the Department.

4. All new applications received by the Regional Administrator subsequent to the effective date of the list described in paragraph 1 of this Article will be transmitted within 10 days of receipt to the Commissioner.

5. The Commissioner hereby agrees that he will provide to the Regional Administrator periodic, statistical reports on all new NPDES applications received by him, and on the progress of all NPDES permits proposed to be issued by him.

ARTICLE III

TRANSMITTAL OF DRAFT PERMITS TO THE REGIONAL ADMINISTRATOR

1. The Commissioner hereby agrees that for all permits proposed to be issued by him for which the Regional Administrator has not waived his right to object to, review and receive information pursuant to Section 402(d) of the FWPCA, the Commissioner will transmit to the Regional Administrator a copy of the application, the public notice, the draft permit and the fact sheet, if applicable, and the rationale detailing the basis for the limits appearing in the draft permit at the time of the publication of public notice for the issuance of a permit. The Regional Administrator shall be afforded a period of thirty (30) days from receipt of such documents during which to make written comments upon, objections to, or recommendations with respect to such a draft permit.

2. The Commissioner agrees that if any draft permit received by the Regional Administrator pursuant to paragraph 1 of this Article is substantially changed subsequent to the initial transmission to the Regional Administrator, the Commissioner shall so notify the Regional Administrator and shall transmit to the Regional Administrator a copy of such changed permit. The Regional Administrator shall have a period of twenty (20) days from receipt of such changed permit during which to make written comments upon, objections to, or recommendations with respect to such changes prior to the issuance of the final permit. For the purposes of this paragraph, a substantial change in a draft permit is a change which either results in the increase of any effluent load (which may be expressed as a percentage of influent allowed to be discharged) by more than 20 percent, provided, however, that such effluent load remains consistent with federal guidelines and requirements, or extension of the final date of compliance in any schedule of compliance more than 60 days after the date set forth in the original draft permit.

3. If the Regional Administrator so requests in writing, the Commissioner shall extend the period of time during which the Regional Administrator may make written comment upon, objection to, or recommendations with respect to any draft permit proposed to be issued by the Department, except that in no event will the total of time, as extended, be greater than 90 days from the original receipt of the draft permit.

4. If the Regional Administrator objects to any permit proposed to be issued pursuant to his right to object provided in Section 402(d)(2) of the FWPCA, such objection shall be in writing, shall state with particularity the provisions of the FWPCA or regulations, guidelines and national program guidance adopted thereunder upon which the objection is based, and shall set forth the terms and conditions required by the Regional Administrator as a condition to elimination of his objections to the proposed permit. Whenever the Regional Administrator objects to a permit, no permit shall be issued by the Department until all objections of the Regional Administrator have been resolved. The Regional Administrator and the Commissioner agree to seek resolution of any objections the Regional Administrator may have in as expeditious a manner as is possible. When an objection of the Regional Administrator has been resolved to his satisfaction, he shall notify the Commissioner in writing of the withdrawal of his objection.

5. The Regional Administrator hereby waives his right, pursuant to Section 402(d)(2) of the FWPCA, to object to any permit proposed to be issued by the Department or routinely to receive any information thereon other than a copy of the final permit for (a) any industrial discharge which has a yearly average flow, based on days of discharge, of less than .1 MGD, or (b) any discharge from a publicly or privately owned sewage treatment works which has an average daily design flow of less than 0.5 MGD

unless such discharge described in (a) or (b) either (i) affects the quality of the waters of any other state, or (ii) contains toxic substances in excess of standards promulgated by the Administrator pursuant to Section 307(a) of the FWPCA.

6. The Commissioner may impose additional requirements, limitations and conditions as he deems necessary as long as such requirements, limitations and conditions do not conflict with federal guidelines and requirements.

ARTICLE IV

RECEIPT OF PERMITS AFTER ISSUANCE

Notwithstanding any other provision of this Agreement, the Commissioner agrees to transmit a copy of every NPDES permit and modifications thereto issued by him to the Regional Administrator no later than thirty (30) days after the issuance of such permit and modifications thereto.

ARTICLE V

MONITORING AND REPORTING

1. The Commissioner or his designee, in accordance with §124.61 of the State Program Elements and 3 NYCRR 756.1, shall apply monitoring conditions in NPDES permits, and shall establish such monitoring requirements for additional pollutants in any NPDES permit, as may be required. The Commissioner shall cooperate with the Regional Administrator on the requirement that copies of all reports required of a permittee under a permit originally issued by the Regional Administrator will continue to be submitted to the Regional Administrator by the permittee.
2. The Commissioner agrees to condition all NPDES permits issued by him for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement so as to require that copies of all reports to be submitted by the permittee to the Commissioner shall also be submitted to the Regional Administrator.
3. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of a publicly or privately owned treatment works containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection

shall complete and transmit to the Regional Administrator a copy of EPA form 7500-5. This does not cover Reconnaissance Inspection Visits for which the Department's Form 216 is usually completed.

4. Whenever the Commissioner or his designee shall conduct a compliance monitoring inspection of an industrial facility containing a discharge for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, the Department personnel conducting such inspection shall complete and transmit to the Regional Administrator a copy of the inspection report.

5. The Regional Administrator shall continue to provide effluent compliance monitoring assistance to the Commissioner. Monitoring, sampling strategy and the degree of assistance to be provided shall be determined and mutually agreed upon through negotiation of the State's annual strategy and water pollution control program plan (\$106 plan).

6. While the Regional Administrator retains responsibility for compliance monitoring pursuant to paragraph 3 of Article I of this Agreement, the Regional Administrator shall transmit to the Commissioner a copy of all such inspection reports together with any other pertinent papers such as letters to the permittee.

ARTICLE VI

TRANSMITTAL OF DATA TO THE NATIONAL DATA BANK

1. Until a national repository of information is permanently established, the Regional Administrator will perform this function with regard to NPDES permits. Therefore, transmission by the Commissioner or his designee of permit applications and final permits, and the conditioning of all NPDES permits to require direct submission of copies of self-monitoring and compliance schedule reports to the Regional Administrator as required in previous Articles shall satisfy the requirement of transmittal of data to the National Data Bank for these permits.

2. The Commissioner and the Regional Administrator shall cooperate in providing each other, in a timely manner, basic information and data needed to carry out their respective programs.

ARTICLE VII

MODIFICATIONS, SUSPENSION AND REVOCATIONS OF ISSUED PERMITS

1. Whenever the Commissioner intends to suspend, revoke or modify an issued NPDES permit for which the Regional Administrator has not waived his right to object as set forth in paragraph 5 of Article III of this Agreement, he shall notify the Regional Administrator, and shall transmit a copy of any permit which is proposed to be modified or revised in respect to a compliance schedule, increased effluent limitation, or sampling and monitoring requirement to the Regional Administrator, together with the proposed changes.
2. The Regional Administrator shall be afforded a period of thirty (30) days following such notice or receipt of such transmitted changes, whichever shall occur later, to comment upon, make recommendations with respect to, or object to the proposed modifications and revisions. If no objections are made within the 30-day period, the Commissioner will issue the modified permit.
3. If any permit is revised or modified in any manner by court action, the Commissioner or his designee shall notify the Regional Administrator of such revision or modification and, upon request, shall transmit a copy of such permit with the changes to the Regional Administrator. Where implementing action by the Commissioner or his designee is required by the court, the Commissioner or his designee, unless prohibited by court order, shall, prior to taking such implementing action, allow the Regional Administrator a period of ten (10) days following such notice or receipt of such transmittal, whichever shall later occur, in which to appeal the court's decision.

ARTICLE VIII

ENFORCEMENT

1. The Department shall continuously monitor compliance with all requirements contained in NPDES permits issued by the Commissioner and the Regional Administrator, including requirements that permittees submit monitoring and compliance reports.
2. On the last day of the months of April, July, October and January the Commissioner shall send the Regional Administrator a quarterly status report which shall contain all known instances, as of 30 days prior to the date of submission of such report, of failure to comply with permit requirements during the reporting period preceding the date of such status report or continuing to remain in noncompliance from any previous quarterly reporting period. The quarterly status report shall set forth the following information for each reported instance of non-compliance:

- a. The name and address of the permittee;
- b. The permit number;
- c. The nature of the instance of noncompliance;
- d. A short description of any actions or proposed actions by the permittee or by the Commissioner to comply or enforce compliance with the permit requirements; and
- e. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement.

3. Whenever the Regional Administrator receives any information that any permittee is in violation of any term or condition of any issued NPDES permit, he shall immediately forward a copy of such information to the Commissioner. The Commissioner will advise the Regional Administrator of the action to be taken. The Regional Administrator agrees to make available to the Commissioner appropriate assistance which may be necessary in any action, administrative or judicial, taken by the Commissioner. Such assistance may include, but is not limited to, investigative reports, laboratory analyses, and appropriate Agency personnel to provide sworn testimony.

4. The Commissioner will transmit to the Regional Administrator a copy of any order or directive, administrative or judicial, related to compliance with the terms and conditions of an NPDES permit originally issued by the Regional Administrator.

5. Nothing contained in this Agreement shall be construed to limit the authority of the Regional Administrator to take appropriate action pursuant to Sections 308 and 309 of the FWPCA, either on his own motion or when requested to do so by the Commissioner.

ARTICLE IX

ASSISTANCE

From time to time the Commissioner and the Regional Administrator shall consult as to whether or not it will be necessary for the Regional Administrator to assist the Commissioner in some manner to insure that the State's pollutant discharge elimination system permit program is at all times in conformance with the applicable requirements of the FWPCA and the State Program Elements. Such assistance shall be rendered as the Commissioner and Regional Administrator may agree.

ARTICLE X

CHANGES IN STATE STATUTES, REGULATIONS,
DIRECTIVES, OR STANDARD TEST METHODS

1. Prior to taking any action to propose or effect any substantial amendment, rescission, or repeal of any statute, regulation, or directive, which the Commissioner has submitted to the Regional Administrator or agreed to make use of in connection with approval of the State's program, the Commissioner shall notify the Regional Administrator by transmittal of the text of any such change to the Regional Administrator. The Regional Administrator shall have 30 days in which to determine whether the proposed change would mean that the State's permit program would not be in accordance with the FWPCAA and the State Program Elements.
2. If an amendment, rescission, or repeal of any statute, regulation, or directive, described in paragraph 1 above shall occur for any reason, including action by the New York Legislature or a court, the Commissioner shall notify the Regional Administrator by transmittal of a copy of the text of such revision to the Regional Administrator.
3. Prior to his approval of any test methods other than those specified by a standard permit form, the Commissioner shall obtain the approval of the Regional Administrator.

ARTICLE XI

FURTHER ASSURANCES

The Commissioner shall seek such legislation, adopt such regulations, and take all further actions which may be needed in order to preserve and maintain any authorities, programs, or commitments described in this Agreement or contained elsewhere in the State's description of its pollutant discharge elimination system permit program submitted to the Administrator.

ARTICLE XII

ACTION THROUGH STAFF PERSONNEL

The Commissioner and the Regional Administrator may designate personnel on their respective staffs to carry out any duty or action required or described herein.

ARTICLE XIII

EFFECT, RESCISSION, MODIFICATION

This Agreement shall take effect upon program approval by the Administrator pursuant to §402(b) of the FWPCA and shall remain in effect for the duration of such approved program or until this Agreement is rescinded. In the event that federal grants to the State of New York to assist in administering programs for the prevention, reduction and elimination of pollution, including enforcement, should be terminated or reduced to the point that insufficient federal funds are provided to administer the federal portion of the NPDES program, or if the Legislature of the State of New York should fail to authorize or appropriate sufficient State funds to provide for full implementation of this Agreement, or for other good and sufficient reasons which in the opinion of the Commissioner prevent the full accomplishment of this program, the Agreement shall be rescinded on 30 day's notice in writing from the Commissioner to the Regional Administrator.

In witness whereof, the parties have executed this agreement on this 28th day of October, 1975.

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL
CONSERVATION

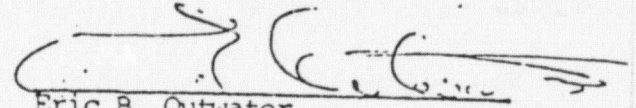
By:



Ogden R. Reid
Commissioner

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
REGION II

By:



Eric B. Outwater
Acting Regional Administrator

for

Gerald M. Hansler, P.E.
Regional Administrator

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTRAL HUDSON GAS & ELECTRIC
CORP; CONSOLIDATED EDISON
CO. OF N.Y. INC.; et al.,

Plaintiffs,

-against-

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, DOUGLAS M.
COSTLE, ECKARDT C. BECK,
et al.,

Defendants.

AFFIDAVIT

LOUIS J. LEFKOWITZ,

Attorney General

Attorney for.....

Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047
Tel. 212-488-7560

Personal service of a copy of

within

is admitted this day of

.....19

Sir:

Please take notice that the within is a true
copy of a
this day duly entered herein in the office of
the Clerk of

Dated, N.Y., , 19

Yours, etc.,

LOUIS J. LEFKOWITZ,

Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047

, Esq.

Attorney for

Sir:--

Please take notice that the within

will be presented for settlement and signature
herein to the Hon.

one of the judges of the within named Court, at

in the Borough of
City of New York, on the day of

19 at M.

Dated, N.Y., , 19

Yours, etc.,

LOUIS J. LEFKOWITZ,

Attorney General,

Attorney For
Office And Post Office Address
Capitol, Albany, N.Y. 12224
New York Office

TWO WORLD TRADE CENTER, NEW YORK, N.Y. 10047

To , Esq.

Attorney for